

Thursday  
April 10, 1986

# Federal Register

**Briefings on How To Use the Federal Register—**

For information on briefings in Dallas, TX, and Washington, DC, see announcement on the inside cover of this issue.

## Selected Subjects

**Administrative Practice and Procedure**

Farmers Home Administration

**Air Pollution Control**

Environmental Protection Agency

**Anchorage Grounds**

Coast Guard

**Aviation Safety**

Federal Aviation Administration

**Bridges**

Coast Guard

**Chemicals**

Environmental Protection Agency

**Employee Benefit Plans**

Pension Benefit Guaranty Corporation

**Endangered and Threatened Species**

Fish and Wildlife Service

**Flood Insurance**

Federal Emergency Management Agency

**Government Procurement**

Defense Department

**Grant Programs—Education**

Education Department

**Loan Programs—Housing and Community Development**

Housing and Urban Development Department

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**FEDERAL REGISTER** Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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There are no restrictions on the republication of material appearing in the **Federal Register**.

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

**How To Cite This Publication:** Use the volume number and the page number. Example: 51 FR 12345.

## Selected Subjects

### Medicaid

Health Care Financing Administration

### Organization and Functions (Government Agencies)

Customs Service

### Postal Service

Postal Service

### Privacy Act

Defense Department

Defense Nuclear Agency

### Reporting and Recordkeeping Requirements

Federal Crop Insurance Corporation

## THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** The Office of the Federal Register.

**WHAT:** Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

### DALLAS, TX

**WHEN:** April 23; at 1:30 pm.

**WHERE:** Room 7A23,  
Earl Cabell Federal Building,  
1100 Commerce Street, Dallas, TX.

### RESERVATIONS: local numbers:

Dallas 214-767-8585  
Ft. Worth 817-334-3624  
Austin 512-472-5494  
Houston 713-229-2552  
San Antonio 512-224-4471,  
for reservations

### WASHINGTON, DC

**WHEN:** May 15; at 9 am.

**WHERE:** Office of the Federal Register,  
First Floor Conference Room,  
1100 L Street NW., Washington, DC.

**RESERVATIONS:** Laurence Davey 202-523-3517



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# Presidential Documents

Title 3—

The President

Proclamation 5455 of April 7, 1986

## Cancer Control Month, 1986

By the President of the United States of America

### A Proclamation

This Nation's investment in basic cancer research has led us to an unprecedented understanding of the cancer cell. With this new knowledge, we are undertaking major efforts to prevent cancer; to reverse the process once it starts; to find ways to activate the body's own immune system; and to treat the disease and its symptoms more effectively.

Our scientists are giving us an abundance of new information about behavior and precautions we can take to help protect us against cancer.

Much evidence suggests that diets high in fiber and low in fat may reduce cancer risk. We can adopt a daily diet high in fiber by choosing plenty of fresh fruits, vegetables, and whole-grain breads and cereals. We can reduce animal fat intake by choosing low-fat and lean foods, and by using low-fat cooking methods.

Smoking-related cancers are the most preventable. This past year, new data showed that the incidence of lung cancer in white men decreased significantly for the first time in at least half a century. This decrease comes 20 years after men began to stop smoking in substantial numbers. This proves that individuals can successfully reduce their cancer risk by not smoking.

This message is especially important for women, whose rates of lung cancer show no signs of leveling off or decreasing. In fact, lung cancer is expected to surpass breast cancer this year as the leading cause of cancer deaths among women. Rates of lung cancer are also high for black men.

The growing popularity of smokeless tobacco products among our youth, particularly teenage boys, is of great concern. Early this year, medical experts concluded that there is strong evidence that such forms of tobacco cause cancer of the mouth.

Some promising findings this year give new hope to cancer patients. Scientists reported a totally new approach to cancer treatment, an approach that activates the immune system to destroy cancer cells in some patients. Extensive studies are underway to refine and perfect the treatment so that it can become widely available as soon as possible.

We have set as a national goal reduction of the national cancer death rate by one-half of its 1980 level by the year 2000. This can be achieved through the active involvement of all Americans.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 150) requesting the President to issue an annual proclamation declaring April to be Cancer Control Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of April 1986 as Cancer Control Month. I invite the Governors of the fifty States and the Commonwealth of Puerto Rico, and the appropriate officials of all other areas under the United States flag, to issue similar proclamations. I also ask the health care professionals, communications industry, food industry, community groups, women's organizations, and all other interested persons and groups to unite during this



appointed time to reaffirm publicly our Nation's continuing commitment to control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.

*Ronald Reagan*

[FR Doc. 86-8180

Filed 4-8-86; 4:28 pm]

Billing code 3195-01-M



## Presidential Documents

Proclamation 5456 of April 7, 1986

### National Organ and Tissue Donor Awareness Week, 1986

By the President of the United States of America

#### A Proclamation

Today, many Americans are working, attending school, caring for families, or resuming normal life in their communities after receiving a transplanted organ or other tissue. But many others still wait for such transplants in order to improve or even save their lives.

The need for donors far surpasses the supply. Current medical technology enables the transplantation of organs and tissues including kidney, heart, heart-lung, lung, liver, pancreas, skin, cornea, bone, and bone marrow. But the greatest obstacle to making these life-sustaining and life-saving transplants possible is the shortage of donors.

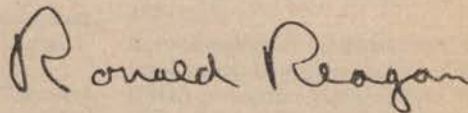
All Americans must know what they can do to consent to become organ and tissue donors. By completing a uniform donor card and carrying it at all times, anyone can give the gift of life to people in desperate need of organs and tissues for transplantation. It is especially important for would-be donors to make their intentions known to family members, so that appropriate action can be taken promptly when the time comes.

Americans are a caring and giving people, so it is fitting that we as a Nation should encourage organ and tissue donation and increase public awareness of the possibilities and the need. I ask every American to consider organ and tissue donation, and I ask the media to assist in informing the public of the great need that exists. Together, we can make organ and tissue donation another expression of American generosity.

The Congress, by Public Law 99-203, has designated the week beginning April 20 through April 26, 1986, as "National Organ and Tissue Donor Awareness Week" and authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim April 20 through April 26, 1986, as National Organ and Tissue Donor Awareness Week. I urge all health care professionals, educators, the media, public and private organizations, and all Americans to join me in promoting greater and more widespread awareness and acceptance of this humanitarian practice.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of April, in the year of our Lord nineteen hundred and eighty-six, and of the Independence of the United States of America the two hundred and tenth.









# Rules and Regulations

Federal Register

Vol. 51, No. 69

Thursday, April 10, 1986

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Parts 272 and 273

[Amdt. No. 264]

#### Food Stamp Program; Deficit Reduction Act

##### Correction

In FR Doc. 86-4260, beginning on page 7178 in the issue of Friday, February 28, 1986, make the following corrections:

1. On page 7203, in the second column, in the second and fifth lines of § 272.1(g)(70), "affective" should read "effective" and "specified. In" should read "specified in" respectively.

2. On page 7206, in the first column, in the eighth line of amendatory instruction 6, the CFR paragraph designation "(f)(4)(i)(B)" should read "(i)(4)(i)(B)".

BILLING CODE 1505-01-M

## Federal Crop Insurance Corporation

### 7 CFR Part 400

[Docket No. 3191S; Amdt. 1]

#### General Administrative Regulations; Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby amends Subpart H in Part 400, Chapter IV, Title 7 of the Code of Federal Regulations, listing the control numbers assigned by the Office of Management and Budget (OMB) to information collection requirements contained in all regulations issued by FCIC, for the purpose of including the control number

assigned by OMB to information collection requirements in FCIC's Appeal Regulations contained in 7 CFR Part 400, Subpart J.

**EFFECTIVE DATE:** April 10, 1986.

#### FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect thereto are impracticable and contrary to the public interest, and good cause is found for making this rule effective less than 30 days after publication in the Federal Register.

Further, since this rule relates to internal agency management it is exempt from the provisions of Executive Order 12291. Lastly, this action is not a major rule as defined in Pub. L. 96-354, the Regulatory Flexibility Act, and thus is exempt from the provisions of the Act.

The Office of Management and Budget (OMB) regulations (5 CFR 1320; 48 FR 13666, March 31, 1983), titled

"Controlling Paperwork Burdens on the Public", requires FCIC to publish currently valid OMB control numbers for each collection of information requirement contained in its regulations. These numbers must be published in a manner that will ensure codification into the Code of Federal Regulations.

FCIC hereby amends 7 CFR Part 400, Subpart H to include the information collection control number issued by OMB for the Appeal Regulations found at 7 CFR Part 400, Subpart J, published in the Federal Register on Wednesday, February 12, 1986, at 51 FR 5147.

#### List of Subjects in 7 CFR Part 400

Administrative practice and procedure, Information collection requirements, OMB control numbers, Reporting and recordkeeping requirements.

#### Final Rule

In accordance with the provisions of 5 CFR 1320, and the Paperwork Reduction Act, Pub. L. 96-511 (44 U.S.C., Chapter 35), the Federal Crop Insurance Corporation hereby amends the General Administrative Regulations: Information Collection Requirements Under the Paperwork Reduction Act: OMB Control

Numbers, found at 7 CFR Part 400, Subpart H, effective upon publication in the Federal Register, in the following instances:

#### PART 400—[AMENDED]

1. The authority citation for 7 CFR Part 400, Subpart H, continues to read as follows:

Authority: 5 U.S.C. 1320, Pub. L. 96-511 (44 U.S.C., Chapter 35).

2. 7 CFR 400.66(b) is amended by adding the following:

#### § 400.66 Display.

\* \* \* \* \*

Appeal Procedure Regulations, 0563-0009

\* \* \* \* \*

Done in Washington, DC on March 21, 1986.

Edward Hews,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 86-7985 Filed 4-9-86; 8:45 am]

BILLING CODE 3410-08-M

## Farmers Home Administration

### 7 CFR Parts 1902, 1924, 1930 and 1944

#### Loan and Grant Programs; Management of Field Office Records

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

**SUMMARY:** The Farmers Home Administration (FmHA) amends its regulations for the management of field office records. This action is necessary in order to remove references to obsolete Instructions and Exhibits. The intended effect of this action is to update references contained in Agency regulations.

**EFFECTIVE DATE:** April 10, 1986.

#### FOR FURTHER INFORMATION CONTACT:

Vernola J. Patterson, Management Analyst, Directives and Administrative Services Division, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 382-1585.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from



those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loan, grants, benefits or contracts notwithstanding the exemption in 5 U.S.C. 533, with respect to such rules. This final action removes obsolete reference to agency regulations. These amendments are brought about as a result of FmHA consolidating its management instructions for field operations. Therefore, this action is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

The Catalog of Federal Domestic Assistance numbers and titles for this action are:

- 10.405 Farm Labor Housing Loans and Grants
- 10.417 Very Low Income Housing Repair Loan and Grants (section 504 Rural Housing Loans and Grants)

For the reasons set forth in the Final rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, and Environmental Impact Statement is not required.

#### List of Subjects

##### 7 CFR Part 1902

Accounting, Banks, banking, Grant programs-housing and community development, Loan programs-agriculture, Loan programs-housing and community development.

##### 7 CFR Part 1924

Agriculture, Construction management, Construction and repair, Energy conservation, Housing, Loan programs-agriculture, Loan programs-housing and community development, Low and moderate income housing.

##### 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs-Housing and community development, Loan programs-housing and community development, Low and moderate income

housing-rental and reporting requirements.

##### 7 CFR Part 1944

Aged, Grant programs-housing and community development, Home improvement, Loan programs-housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Rural housing.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

#### PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for Part 1902 is revised to read as follows:

Authority: U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70

#### Subpart A—Loan and Grant Disbursement

##### § 1902.11 [Amended]

2. Section 1902.11 is amended in the first sentence by inserting a period after the word "FMI" and removing the rest of the sentence.

#### PART 1924—CONSTRUCTION AND REPAIR

3. The authority citation for part 1924 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart A—Planning and Performing Construction and Other Development

##### § 1924.6 [Amended]

4. Section 1924.6(b)(3)(ii)(C) is amended by removing the words "as provided in Exhibit A to FmHA Instruction 2033-A (available in any FmHA Office)" and inserting in their place the words "in accordance with the FMI."

#### PART 1930—GENERAL

5. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23 7 CFR 2.70.

#### Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

##### § 1930.134 [Amended]

6. In § 1930.134, paragraph (a) is amended in the first sentence by changing the words "Subpart B" to "Subpart A", and in the second sentence by adding the words "or other authorized system" after the words "Multiple Housing Activity Card."

7. In § 1930.134, paragraph (b) is amended in the first sentence by changing the words "Subpart A and B" to "Subpart A."

#### PART 1944—HOUSING

8. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

#### Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures and Authorizations

##### § 1944.176 [Amended]

9. Section 1944.176(f)(2) is amended by changing the words "FmHA Instruction 2033-B" to "FmHA Instruction 2033-A."

#### Subpart J—Section 504 Rural Housing Loans and Grants

10. In § 1944.457, paragraph (a)(4) is revised to read as follows:

##### § 1944.457 Loan and grant restrictions.

(a) \* \* \*

(4) The amount of assistance provided each borrower/grantee will be documented on the list of section 504 recipients, which is retained in the office operational file. This list will include the following information recorded at the time a section 504 loan/grant is made.

- (i) Borrower's name and case number.
- (ii) Name of co-owner(s), if any.
- (iii) Amount of the loan and/or grant.
- (iv) Date loan and/or grant was made.

\* \* \*

Dated: March 13, 1986.

Vance L. Clark,  
Administrator, Farmers Home  
Administration.

[FR Doc. 86-7970 Filed 4-9-86; 8:45 am]

BILLING CODE 3410-07-M

#### DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

##### 24 CFR Part 885

[Docket No. R-86-1254; FR-1899]

#### Loans for Housing for the Elderly or Handicapped

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule.



**SUMMARY:** This interim rule amends 24 CFR Part 885 to: (1) impose limitations on the prepayment or transfer of section 202 loans; (2) amend § 885.5, regarding the definitions of "Borrower" and "Sponsor"; (3) revise § 885.416(c), regarding the selection of contractors by the Borrower; (4) add new provisions applicable to Sponsors and Borrowers that relate to such matters as tax status; financial interests and prohibited activities, and organizational requirements; and (5) impose certain requirements relating to site acquisitions. The interim rule also adds a new paragraph (d)(2) to § 885.220 to spell out requirements relating to intergovernmental review procedures. Most of the revisions contained in this rule implement statutory changes in the Section 202 Program enacted in the Housing and Urban-Rural Recovery Act of 1983 and in the Housing and Community Development Technical Amendments Act of 1984.

**DATES:** Effective date: May 12, 1986.  
Comment due date: June 9, 1986.

**ADDRESS:** Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication will be available for public inspection and copying during regular business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Wilden, Assisted Elderly and Handicapped Housing Division, Room 6118, Office of Elderly and Assisted Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, DC 20410-8000, telephone (202) 426-8730. (This is not a toll-free number.)

#### **SUPPLEMENTARY INFORMATION**

##### **I. Background**

*A. Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181)*

Sections 223 (d) and (e) of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act) contained amendments to section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) that were effective with the Act's enactment on November 30, 1983. Notice that these amendments were applicable to section 202 projects funded by HUD during fiscal years 1984 and 1985 was given in the Announcement of Fund Availability published for each of those Fiscal Years, since HUD was unable to issue new

regulations early enough for those funding cycles. The Announcements were published on December 23, 1983 at 48 FR 56585 (corrected as to effective date on December 30, 1983 at 48 FR 57626), and on February 1, 1985 at 50 FR 4812.

The Department noted in the preamble of each of those Announcements that the section 202 program is, in large part, already administered in a manner consistent with the 1983 legislative amendments, but that some revision of 24 CFR Part 885 would be necessary to provide consistency with the provisions of the 1983 Act. Consequently, the Department has determined that it is necessary to amend the cited sections of Part 885 to reflect the following provisions of the Housing and Urban-Rural Recovery Act of 1983:

(1) The provisions of new section 202(j)(1) that set limits on prepayments and transfer (assignments) of section 202 loans (§ 885.412); and

(2) The provisions of new section 292(l) that permit the Sponsor or Borrower to select the contractor under certain conditions (§ 885.416(c)).

Section 223(d) of the 1983 Act amended section 202(h) of the Housing Act of 1959 to expand the beneficiary class of handicapped persons. Since the amendment applied only to appropriations for Fiscal Year 1984, it is unnecessary and inappropriate to cover that amendment in this interim rule.

Additionally, the following subsections of the 1983 Act are not reflected in this rule because their provisions apply only to the Secretary and in most instances reflect policies and practices already in effect:

(1) Subsection (i)(1)—limitations on the number of efficiency units in a section 202 project;

(2) Subsection (i)(2)—requirement of escrow of up to \$10,000 by a Sponsor of a section 202 project to assure the commitment and long-term capabilities of such Sponsor;

(3) Subsection (i)(3)—requirement of annual adjustment of the per-unit cost limitations and consideration of design features needed to meet the needs of elderly and handicapped residents in setting such limits;

(4) Subsection (j)(2)—prohibition against sale of any mortgage held by the Secretary as a security for a section 202 loan;

(5) Subsection (k)(2)—encouragement of small and scattered site group homes and independent living facilities for the nonelderly handicapped; and

(6) Subsection (m)—voluntary use of additional funds from other sources by a Sponsor to cover cost of amenities and

other appropriate features, if such costs are not financed by the loan or reflected in the amount of Federal subsidy or in the tenant's rent contribution.

#### *B. Housing and Community Development Technical Amendments Act of 1984 (Pub. L. No. 98-479)*

Section 102(c)(3) of the Housing and Community Development Technical Amendments Act of 1984 (the 1984 Act) amended section 202(f) of the Housing Act of 1959 to prohibit the Secretary from imposing different requirements or standards with respect to construction change orders, increases in the loan amount to cover change orders, errors in plans and specifications, and use of contingency funds, because of the method of contractor selection used by the Sponsor or Borrower. Accordingly, the interim rule removes provisions in current § 885.416(c) that impose differing standards or requirements on negotiated, noncompetitive construction contracts.

#### **II. Executive Order 12372, "Intergovernmental Review of Federal Programs"**

On June 24, 1983, HUD published regulations in the *Federal Register* at 48 FR 29206 to add a new 24 CFR Part 52 to implement Executive Order 12372, "Intergovernmental Review of Federal Programs". The Order, which applies to the section 202 program as well as to other HUD programs, permits States to establish their own processes for State, areawide, regional, and local review and comment on proposed Federal financial assistance programs. This rule revises § 885.220(d) to provide that HUD will submit or require the Borrower to submit copies of eligible section 202 applications to the State's single point of contact for review and comment, in accordance with the provisions of 24 CFR Part 52, which deal with intergovernmental review of HUD's programs and activities.

#### **III. Provisions Applicable to Sponsors and Borrowers**

HUD is amending the definitions of "Sponsor" and "Borrower" contained in § 885.5 to include information relating to prohibited conflicts of interest that apply to directors and officers of the Sponsor and Borrower. Additionally, the amendment of the definition of "Sponsor" permits sponsors to enter into management contracts with regard to section 202 projects that they sponsor. This exception to the conflict of interest provisions recognizes that (1) one of the ranking and rating factors used by HUD to evaluate section 202 applications is



the management capability of the Sponsor, and (2) permitting Sponsors with management skills to manage their section 202 projects is a longstanding HUD practice. Consequently, many sponsors have developed significant management experience, and the Department believes that it would be inappropriate and contrary to the best interests of the section 202 program to bar such Sponsors from entering into management contracts.

The following material, discussed in the February 1, 1985 Announcement of Fund Availability (50 FR 4812) as being applicable to Sponsors and Borrowers, has been added to Part 885 in the sections cited:

(1) The requirement that, with regard to projects sponsored by religious bodies, the Borrower corporation must be a separate legal entity, and no reference to religion or religious purposes may be included in the Articles of Incorporation or By-Laws of the Borrower corporation (§ 885.210(a)(9));

(2) The prohibition against section 202 Borrower corporations engaging in any other business or activity (including the operation of any other rental project), or incurring any liability or obligation not related to the proposed project (§ 885.210(a)(9));

(3) The requirement that Sponsors, including churches, have a current tax exemption ruling from the IRS, and, where the Sponsor and Borrower are not the same, that the Borrower furnish evidence that it has a currently effective tax exemption or had applied for one no later than the deadline date set for submission of section 202 applications (§ 885.210(a)(13));

(4) The prohibition, with regard to a proposed project site that is being optioned or acquired from a general contractor or its affiliate, against the Borrower's selecting that contractor to construct the section 202 project. (§ 885.210(a)(23)); and

(5) The requirement, in cases involving sites to be acquired from a public body, that satisfactory evidence of site control consist of documentary evidence that the public body (a) possesses clear title to the land and (b) has entered into a legally binding commitment to convey the land to the Borrower corporation when the Borrower receives and accepts notice of the section 202 Fund Reservation (§ 885.210(a)(23)).

HUD is also correcting a format error in § 885.210 to conform to the requirements of the Office of the Federal Register that paragraphs within a regulation carry a designation, by designating the first paragraph in

§ 885.210 as paragraph (a) and redesignating the current paragraph (a) as paragraph (b). For ease of reference, however, the provisions of § 885.210 are identified in this preamble by their current designations and are identified in the regulatory language section of this rule by their new paragraph designations.

The rule being published as an interim rule, since its scope is limited to matters on which public notice has been given previously. All affected parties were given notice of the provisions of the interim rule in the Announcement of Fund Availability published in the *Federal Register* on February 1, 1985 at 50 FR 4812. The Secretary has determined that it is unnecessary to provide for further notice and public procedure in advance of effectiveness of these amendments. To delay the rule's implementation would not be in the public interest, because those provisions of the rule specifically applicable to Sponsors and Borrowers (such as tax status, financial interests, prohibited activities, and site acquisitions) are needed to ensure that eligibility requirements are understood and met. The interim rule will facilitate the preparation of section 202 applications by eligible Borrowers and will ensure the proper processing of applications.

Accordingly, the Secretary has determined that good cause exists for publishing these amendments as an interim rule. The Department is, however, soliciting post-publication comments for a 60-day period following publication of the interim rule. The Department will consider all comments received within the 60-day period in its preparation of a final rule.

#### IV. Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, DC 20410-0500.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government

agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities because, rather than imposing new requirements on Sponsors or Borrowers or resulting in the expenditure of more funds by Sponsors or Borrowers, this rule clarifies existing and statutorily mandated policies and procedures to facilitate the development of applications and ensure the proper processing of applications.

This rule was listed in the Department's Semi-Annual Agenda of Regulations published October 29, 1985 (50 FR 44166) as sequence item number 845, under Executive Order 12291 and the Regulatory Flexibility Act.

The information collection requirements contained in this rule were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. All requirements have been approved and have been assigned OMB Control Number 2502-0267.

The Catalog of Federal Domestic Assistance Program title and number is 14.157, Housing for the Elderly or Handicapped.

#### List of Subjects in 24 CFR Part 885

Aged, Grant programs: housing and community development, Handicapped, Loan programs: housing and community development, Low- and moderate-income housing.

Accordingly, the Department amends 24 CFR Part 885 as follows:

#### PART 885—LOANS FOR HOUSING FOR THE ELDERLY OR HANDICAPPED

1. The authority citation for 24 CFR Part 885 continues to read as follows:

**Authority:** Sec. 202, Housing Act of 1959 (42 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Section 885.5 is amended by revising the definitions for *Borrower* and *Sponsor*, to read as follows:

#### § 885.5 Definitions.

*Borrower* means a private nonprofit corporation or a nonprofit consumer



cooperative which may be established by the Sponsor, which will obtain a section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. "Borrower" does not mean a public body or the instrumentality of any public body. The purposes of the Borrower must include the promotion of the welfare of elderly and/or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, contributor or individual, and the Borrower may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the section 202 program, no officer or director, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

*Sponsor* means any private nonprofit entity, no part of the net earnings of which inures to the benefit of any private shareholder, contributor or individual, which entity is not controlled by, or under the direction of persons or firms seeking to derive profit or gain therefrom, and which is approved by the Field Office Director as to administrative and financial capacity and responsibility. "Sponsor" does not mean a public body or the instrumentality of a public body. Because of the nonprofit nature of the section 202 program, no officer or director of the Sponsor is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever. The prohibition in the preceding sentence does not apply to any management contracts (including the management fees associated therewith) entered into by the Borrower with the Sponsor or its nonprofit affiliate.

3. Section 885.210 is amended by designating the introductory paragraph as paragraph (a) and by revising newly redesignated paragraph (a) as set forth below; and by redesignating current paragraph (a) as paragraph (b), adding a new introductory paragraph (b), and by revising newly redesignated paragraphs (b)(9), (b)(13) and (b)(23)(i) and adding

the OMB control number to read as follows:

**§ 885.210 Contents of applications.**

(a) Each application shall include all of the information, materials, forms, and exhibits listed in paragraph (b) of this section. The Field Office will base its determination of the eligibility of the Borrower for a reservation of section 202 loan funds and for participation in the section 8 Housing Assistance Payments program on the information provided in the application. Each Sponsor identified in an application must provide the information that is required of the Borrower in paragraphs (b)(10) through (b)(22) of this section.

(b) Each application shall include—

(9) Evidence of the Borrower's legal status as a nonprofit corporation. If the Sponsor is a religious body, the Borrower corporation must be a separate legal entity, and no reference to religion or religious purposes may be included in its Articles of Incorporation or By-Laws. Additionally, a Borrower corporation may not engage in any other business or activity (including the operation of any other rental project), or incur any liability or obligation not related to the proposed project.

(13) Satisfactory evidence that the Sponsor and the Borrower—(i) Have the necessary legal authority to finance, acquire (with or without moderate rehabilitation), construct or substantially rehabilitate and maintain the project, and to apply for and receive the proposed loan; (ii) Meet any requirements as to corporate organization; and (iii) Have the authority to enter into such contract obligations and execute such security documents as HUD may require. Additionally, Sponsors, including churches, must have a currently effective tax exemption ruling from the Internal Revenue Service (IRS), and, where the Sponsor and the Borrower are not the same legal entity, the Borrower must furnish evidence that it also has received a Section 501(c)(3) or (4) tax exemption ruling from the IRS or documentary evidence that it had applied for such a ruling no later than the deadline date for section 202 applications set by HUD under § 885.205 (a)(3) and (c)(6). (Consumer cooperatives and nonprofit organizations organized in the Commonwealth of Puerto Rico may be exempted from the requirement set out in the previous sentence if they are not eligible for IRS 501(c)(3) or (4) rulings.)

(23) \* \* \*

(i) Documentary evidence that the Borrower has control of the site, consisting of—

(A) In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding commitment to convey the site to the Borrower corporation when the Borrower receives and accepts a notice of Section 202 Fund Reservation; or

(B) In the case of a site to be acquired from other than a public body, a copy of any contract of sale for the site or a copy of any applicable site option agreement, a deed, or other legal commitment for the site.

With regard to a proposed project site that is being acquired or optioned from a general contractor or its affiliate, the Borrower may not select that contractor or affiliate to construct the Section 202 project.

(Information collection requirements approved by the Office of Management and Budget under control number 2502-0267)

4. Section 885.220(d)(1) is revised and the OMB control number is added to read as follows:

**§ 885.220 Review of application for fund reservation.**

(d) \* \* \*

(1) For purposes of compliance with section 213 of the Housing and Community Development Act of 1974, the Field Office shall forward (if not previously submitted by the Borrower) a notification, in the form prescribed by HUD, to the Chief Executive Officer (or such persons as that Office may designate) of the unit of general local government in which the proposed housing is to be located, and shall invite a response within 30 calendar days from the date of the notification letter. For purposes of compliance with Executive Order 12372, "Intergovernmental Review of Federal Programs", HUD will submit, or require the Borrower to submit, copies of eligible Section 202 applications to the State's single point of contact for review and comment in accordance with the provisions of 24 CFR Part 52.

(Information collection requirements approved by the Office of Management and Budget under control number 2502-0267)

5. A new § 885.412 is added, to read as follows:

**§ 885.412 Prepayment privileges.**

(a) The prepayment (whether in whole or in part) or the assignment or transfer



of physical and financial assets of any section 202 project is prohibited, unless the Secretary gives prior written approval.

(b) Approval may not be granted unless the Secretary has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original section 202 loan agreement and any other loan agreements entered into under other provisions of law.

6. Section 885.416(c) is revised to read as follows:

**§ 885.416 Requirements for awarding construction contracts.**

(c)(1) A Sponsor or Borrower may award a negotiated, noncompetitive construction contract only if—

(i) The development cost of the project is less than \$2,000,000; or

(ii) The project rents will be less than 110 percent of the Fair Market Rents applicable to Section 202 projects in effect at the time of the Fund Reservation for the project; or

(iii) The Sponsor is a labor organization.

(2) Whenever any of the conditions of paragraph (c)(1) of this section is met at the initial reservation stage, competitive bidding will be required if HUD determines, at any stage before the start of construction, that any such condition can no longer be met.

(3) Any negotiated, noncompetitive construction contract under this paragraph (c) shall be a cost-reimbursement contract with a ceiling price, and may provide for an incentive payment to the Contractor for early completion.

Dated: February 27, 1986.

Silvio J. DeBartolomeis,

*Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.*

[FR Doc. 86-8010 Filed 4-9-86; 8:45 am]

BILLING CODE 4210-27-M

**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**32 CFR Part 291a**

**Privacy Program**

**AGENCY:** Defense Nuclear Agency, DoD.

**ACTION:** Final rule.

**SUMMARY:** This revised rule implements the provisions of the Privacy Act of 1974, Pub. L. 93-579, as amended, 5 U.S.C. 552a, and adopts the policies and procedures as set forth in the Department of Defense Privacy Program, DoD Regulation 5400.11-R, August 1983, 32 CFR Part 286a, Revised Final Rule, January 16, 1986, (51 FR 2364). This revision supersedes the agency rule published on November 28, 1975 (40 FR 55543), and amended on April 29, 1977 (42 FR 21776) and April 27, 1982 (47 FR 17989).

**EFFECTIVE DATE:** This rule will be effective May 12, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert L. Brittigan, General Counsel, HQ, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, Va., 22310-3398. (202) 325-7681, AV 221-7681.

**SUPPLEMENTARY INFORMATION:** This revised rule is published in accordance with 5 U.S.C. 552a(f) which requires Federal Agencies to promulgate rules for implementing the Privacy Act. The revision adopts the fundamental policies and procedures of the Department of Defense Privacy Program for implementation, delegates authorities and assigns responsibilities for the administration of the agency program, and establishes the specific and blanket exemptions applicable to the agency's systems of records. Record system notices for the agency's systems of records were published in the annual recompilation on May 29, 1985 (50 FR 22597).

**Regulatory Impact Analysis**

In accordance with E.O. 12291, the Department of Defense has determined that this revised rule is not a "major rule" and is not subject to such an analysis.

**Regulatory Flexibility Act**

In accordance with 5 U.S.C. 605(b) the Department of Defense has determined that this revised rule will not have a significant impact on a substantial number of small entities.

**Paperwork Reduction Act**

This revised rule does not impose any additional reporting or recordkeeping which would require Office of Management and Budget clearance.

**List of Subjects in 32 CFR Part 291a**

Privacy program.

April 4, 1986.

Patricia H. Means,

*OSD Federal Register Liaison Officer, Department of Defense.*

Accordingly, 32 CFR Part 291a is revised and reads as follows:

**PART 291a—DEFENSE NUCLEAR AGENCY PRIVACY PROGRAM**

Sec.

291a.1 Purpose.

291a.2 Applicability.

291a.3 Designations.

291a.4 Responsibilities.

291a.5 Exemptions.

Authority: Pub. L. 93-597, 88 Stat. 1896 (5 U.S.C. 552a).

**§ 291a.1 Purpose.**

This rule implements the provisions of the Privacy Act of 1974, as amended, and adopts the policies and procedures as set forth by the Department of Defense Privacy Program, 32 CFR Part 286a.

**§ 291a.2 Applicability.**

The provisions of this rule apply to Headquarters, Defense Nuclear Agency (HQDNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Research Institute (AFRRI).

**§ 291a.3 Designations.**

The General Counsel, HQDNA, is designated as the agency Privacy Act Officer. The Privacy Act Officer is the principal point of contact for privacy matters and is the agency Initial Denial Authority. The Director, DNA, is the agency Appellate Authority.

**§ 291a.4 Responsibilities.**

(a) The Director, DNA is responsible for implementing the agency Privacy Program in accordance with the specific requirements of 32 CFR Part 286a.

(b) The Privacy Act Officer is responsible for monitoring and ensuring agency compliance with the DoD Privacy Program in accordance with 32 CFR Part 286a.

(c) Agency component and element responsibilities are set forth in DNA Instruction 5400.11A,<sup>1</sup> 3 March 1986.

<sup>1</sup> Copies may be obtained, if needed, from: Defense Nuclear Agency, Public Affairs Office, Washington, DC 20305-3398.



**§ 291a.5 Exemptions.**

(a) HDNA 007 Security Operations;  
(1) Specific Exemption. Portions of this system of records are exempt from the provisions of 5 U.S.C. 552a (c)(3); (d); (e)(4) (G), (H), (I); and (F).

(2) Authority. 5 U.S.C. 552a(k)(5).

(3) Reason. To protect the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to 27 September 1975, under an implied promise that identity of the source would be held in confidence.

(b) In accordance with 32 CFR 286a.50(c), the blanket exemption for classified material is applicable to any agency system of records.

[FR Doc. 86-7969 Filed 4-9-86; 8:45 am]

BILLING CODE 3810-01-M

**Department of the Air Force****32 CFR Part 834****Selecting Architect-Engineers for Professional Services by Negotiated Contracts**

**AGENCY:** Department of the Air Force, Defense.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Air Force is amending Title 32, Chapter VII of the CFR by removing Part 834, Selecting Architect-Engineers for Professional Services by Negotiated Contracts. The source document, Air Force Regulation (AFR) 88-31, has been revised. Air Force procedures for selecting architect-engineer services are governed by 48 CFR Subpart 36.6 (Federal Acquisition Regulation) and 48 CFR Subpart 236.6 (Department of Defense).

**EFFECTIVE DATE:** January 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patsy J. Conner, Air Force Federal Register Liaison Officer, AF/DASJR(S), Pentagon, Washington, DC 20330-5025, telephone: (202) 697-1861.

Authority: Sec. 8012, 70A Stat. 488; 10 U.S.C. 8012.

**PART 834—[REMOVED]**

Accordingly, 32 CFR, Chapter VII, is amended by removing Part 834.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-7987 Filed 4-9-86; 8:45 am]

BILLING CODE 3910-01-M

**DEPARTMENT OF TRANSPORTATION****Coast Guard****33 CFR Part 110**

[CGD1 85-2R]

**Special Anchorage Area; Boston Harbor, Boston, MA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The present Boston Inner Harbor Special Anchorage areas identified as Anchorages A, B and C in 33 CFR 110.30 (m)(1), (m)(2), and (m)(3) are being modified. The result will be that these anchorages will cease to exist and a new anchorage designated as Boston Inner Harbor A will be established. The modification to the anchorages is being made in response to a request by the Boston Harbormaster, Boston Police Department, and the developer of the Rowe's Wharf reconstruction project. The modification is required because redevelopment of the Rowe's Wharf area in Boston will change recreational and commercial vessel traffic patterns in the Rowe's Wharf waterfront area. The presence of the existing Special Anchorage B will impede the passage of vessels in and out of Rowe's Wharf and will create unnecessary safety hazards by vessels being anchored there.

**EFFECTIVE DATE:** May 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** The Port Operations Officer at USCG Marine Safety Office, Boston, MA who may be contacted at Phone (617) 223-1470.

**SUPPLEMENTARY INFORMATION:** On June 16, 1985 the Coast Guard published a notice of proposed rule making in the Federal Register for these regulations 50 FR 25268. Interested persons were requested to submit comments. No comments were received.

**Drafting Information**

The drafters of these regulations are LCDR Michael Wade, Project Officer for the Captain of the Port Boston, MA and LCDR James M. Collin, Project Attorney, First Coast Guard District Legal Office.

**Discussion of Comments**

No comments were received during the comment period for the Notice of Proposed Rulemaking. Additionally the Proposed Rulemaking was reviewed by the Project Officer and no modifications to the proposed rule were necessary. The configuration of the pier areas at Rowe's Wharf is being changed as a part of the redevelopment of the area. As a result, the continued use of the B

anchorage area (33 CFR 110.30(m)(2)) at the mouth of Fort Point Channel will be unacceptable because of the approaches that vessel operators will be required to make. Upon the effective date of this regulation, Boston Inner Harbor Special Anchorage Areas A, B, and C will be deleted and a new Boston Inner Harbor Special Anchorage Area A will be established. The area encompassed by the new special anchorage will provide the same total area as is presently available in the three special anchorages. This regulation is issued pursuant to 33 U.S.C. 2030, 2035, and 2071 as set out in the authority citation for all of 33 CFR Part 110.

**Economic Assessment and Certification**

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal has been found to be so minimal that a full regulatory evaluation is unnecessary. The Rowe's Wharf redevelopment project has been the subject of intense review by the City of Boston and the Commonwealth of Massachusetts in concert with the U.S. Coast Guard, concerned citizens, and current and prospective users of the facility. The use patterns projected for commercial and recreational vessels at the redeveloped Rowe's Wharf facility presume this modification of the Special Anchorages. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Final Regulations**

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

**PART 110—[AMENDED]**

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 110.30 is amended by revising paragraph (m) to read as follows:

**§ 110.30 Boston Harbor, Mass., and adjacent waters.**

\* \* \* \* \*



(m)(1) Boston Inner Harbor A. The waters of the western side of Boston Inner Harbor north of the entrance to the Fort Point Channel bounded by a line beginning at a point due east of the New England Aquarium, Latitude 42°21'31.62" North, Longitude 71°02'52.37" West. Thence ENE toward the Main Ship Channel to a point, Latitude 42°21'32.6" North, Longitude 71°02'47.3" West. Thence SE to a point due east of Harbor Towers, Latitude 42°21'26.4" North, Longitude 71°02'40.66" West. Thence W toward the Boston Shore to a point, Latitude 42°21'26.4" North, Longitude 71°02'56.31" West. Thence NE to the original point.

**Note.**—Administration of Special Anchorage areas is exercised by the Harbormaster, City of Boston pursuant to local ordinances. The City of Boston will install and maintain suitable navigational aids to mark the limits of Special Anchorage areas.

Dated: April 1, 1986.

R.L. Johanson,

Rear Admiral (Lower Half), U.S. Coast Guard,  
Commander, First Coast Guard District.

[FR Doc. 86-8014 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Parts 110 and 162

[CGD12 84-07]

#### Anchorage Regulations; San Francisco Bay

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is amending its Anchorage Regulations by requiring a manned radio watch on all vessels greater than 300 gross tons anchored in San Francisco Bay when winds exceed 25 knots. Vessels anchored in San Francisco Bay frequently experience periods of strong winds which can cause them to drag anchor, often without their crew's knowledge. This rule will minimize the hazard in these situations by requiring a manned radio watch during periods of heavy winds to receive position fixing information from Vessel Traffic Service (VTS), San Francisco.

The Coast Guard is also making editorial changes to 33 CFR 110.224 to make the regulations easier to read and understand.

**EFFECTIVE DATE:** May 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** LCDR William A. Dickerson (415) 437-3465.

**SUPPLEMENTARY INFORMATION:** On 10 September, 1984 the Coast Guard published a notice of proposed rule

making in the Federal Register for these regulations (49 FR 35523).

Interested persons were requested to submit comments and 7 comments were received.

A summary of the significant changes follows:

a. The format has been revised so that general rules applicable to all anchorages appear at the beginning rather than at the very end. Nonsubstantive grammatical changes have been made to some rules.

b. The general rules are followed by rules applicable to naval anchorages and to explosives anchorages.

c. Individual anchorages and specific rules applicable to them are shown in a tabular format.

d. The technical boundary descriptions of these anchorages are relegated to the very end of the regulations. They remain unchanged except that names of aids to navigation have been corrected.

e. The general prohibition against anchoring outside anchorage areas has been extended to include the Sacramento Deep Water Ship Channel and turning basin. This is already prohibited by 33 CFR 162.205(c)(3)(ii) but is not found in the anchorage regulations, presumably because the Sacramento Channel did not exist when the anchorage regulations were written.

f. The prohibition of anchoring outside anchorage areas "except when unforeseen circumstances create conditions of imminent peril" has been relaxed to "except when required for safety."

g. The operation of explosive anchorages has been standardized to provide maximum availability for other uses when not required for explosives use. Currently there are four different sets of rules for the explosives anchorages.

h. Existing regulations that prohibit other vessels from using an explosives anchorage are clarified to prohibit "entry" rather than "use".

i. The use of naval anchorages by other vessels is authorized when not required for public vessels. This legitimizes existing practice in Anchorage 21; it is already authorized in Anchorage 10.

j. The regulations acknowledge that reports made to VTS are considered to have been made to the Captain of the Port (COTP).

k. The regulations for Decker Island Restricted Anchorage found in 33 CFR 110.224(f) are relocated without change and redesignated as 33 CFR 162.205(d). This item is more properly a navigation regulation than an anchorage regulation.

#### Drafting Information

The drafters of these regulations are LCDR William A. Dickerson, project officer, Twelfth Coast Guard District Marine Safety Division, and CDR William Bissell, project attorney, Twelfth Coast Guard District Legal Office.

#### Discussion of Comments

Of the seven comments received, one supported the proposed regulation with no additional comment.

One shipping company indicated that company policy required licensed deck officers on the bridge when their vessels were at anchor. These officers were required to monitor the vessel's position and weather, and maintain a VHF bridge watch of Channels 13 and 16. As such, these regulations would not be any change from normal practice. However, they questioned the need for a Radio Officer to be on watch in addition to a licensed deck officer. They felt a licensed deck officer was qualified and could maintain an efficient radio watch. It was not the intent of the regulation to specify company policy, how many persons were required to be on watch at one time while the vessel was at anchor, or that the vessel's radio officer be the one to monitor the radio. The intent was for the vessel to have a radio watch maintained when winds exceeded 25 knots by someone who fluently speaks the English language, not to dictate who that person might be.

One commenter suggested that a radio watch should be maintained by vessels at anchor at all times, no matter what the weather conditions. Although this may be common practice, the regulations are not intended to prescribe vessel operating procedures except when weather conditions require increased vigilance. They also questioned the awkwardness of monitoring the wind to determine when to monitor the radio. The concept of using wind speed to determine when to monitor the vessel's radio is based on the application of a single environmental factor common to all vessels. It is these winds which contribute the most to causing vessels to drag their anchor. Higher winds exert a greater force on the vessel and create greater potential for vessels to drag anchor. Water depth, scope of chain used, or the sail area of the vessel are factors that change for every vessel and vary according to each anchorage. The wind speed is one factor which is applicable to all vessels equally. Although the effect of the same wind speed may differ on vessels, this is one



means of applying a common factor to all vessels alike.

One commenter suggested that the rule be strengthened by requiring the watch person speak 'and understand' English fluently. They also suggested that the vessel's position be fixed hourly during periods of adverse weather. They stated the fact that someone is merely on the bridge would not achieve the margin of safety intended unless it is also required that the ship's position be fixed frequently. The Coast Guard believes that fluency in the English language carries with it sufficient understanding for the purposes of these regulations. Plotting the vessel's position hourly may increase the margin of safety during high winds; however, control of vessel operations remains the responsibility of the vessel. It is incumbent upon vessel personnel to determine how frequently they plot their position to see if they may have dragged anchor. Vessel Traffic Service San Francisco maintains a continuous radar watch of vessels at anchor from a fixed position. While not relieving vessel personnel of their responsibility for the safe anchorage of their own vessels, the intent of this regulation is not to dictate vessel bridge operations.

Two commenters offered no specific approval but recommended corrections to several anchorage boundary descriptions. These changes correct Latitude/Longitude errors in the proposed regulation, and correct references to certain navigational aids used in describing anchorage boundaries. No changes to existing anchorage boundaries are being made in this regulation or result from these corrections.

One commenter questioned the authority of the COTP to approve permanent yacht moorings in Anchorage 10. Although the COTP retains an interest in the placement of permanent moorings in an anchorage, approval for permanent moorings rests with the Army Corps of Engineers and other local government agencies. Accordingly, this statement has been removed from the specific regulations applicable to Anchorage 10.

#### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations has been found to be so minimal that a full regulatory evaluation is unnecessary. The only economic impact will be a slight increase in radio

operator salary costs to the individual shipping companies which pales by comparison to the enormous costs of the threatened hazard. In addition, the affected vessels normally spend a minimum amount of time at anchor and the National Weather Service advises that winds in San Francisco Bay exceed 25 knots only 38 days each year.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects

##### 33 CFR Part 110

Anchorage grounds.

##### 33 CFR Part 162

"Navigation (Water), Waterways."

#### Final Regulations

### PART 110—ANCHORAGE REGULATIONS

In consideration of the foregoing, Part 110 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a are also issued under 33 U.S.C. 1231.

2. Section 110.224 is revised to read as follows:

**§ 110.224 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, Sacramento River, San Joaquin River, and connecting waters, Calif.**

#### (a) General Regulations.

(1) Within the navigable waters of San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, New York Slough, San Joaquin River Deep Water Channel, the Stockton Turning Basin, the Sacramento River Deep Water Ship Channel between Suisun Bay and the east end of the West Sacramento Turning Basin, and connecting waters, anchoring is prohibited outside of designated anchorages except when required for safety or with the written permission of the Captain of the Port. Each vessel anchoring outside an established anchorage area shall immediately notify the Captain of the Port of her position and reason for anchoring.

(2) No vessel may permanently moor in areas adjacent to the San Joaquin River Deep Water Channel except with the written permission of the Captain of the Port.

(3) Each vessel anchoring for safety reasons in the San Joaquin River Deep

Water Channel, the Sacramento River Deep Water Ship Channel, or the Stockton or West Sacramento Turning Basins shall be positioned as near to the edge of the channel or turning basin as possible so as not to interfere with navigation, or obstruct the approach to any pier, wharf, slip, or boat harbor and shall move as soon as the reason for anchoring no longer exists or when notified to move by the Captain of the Port.

(4) No vessel may anchor within a tunnel, cable, or pipeline area shown on a Government chart.

(5) No vessel may moor, anchor, or tie up to any pier, wharf, or other vessel in such a manner as to extend into an adjacent channel or fairway.

(6) No vessel in such a condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels may occupy an anchorage, except when unforeseen circumstances create conditions of imminent peril to personnel and then only for such period as may be authorized by the Captain of the Port.

(7) Each vessel carrying explosives shall only anchor in an explosives anchorage except as authorized by paragraph (a)(1) or (a)(17) of this section.

(8) No vessel other than a vessel under Federal supervision may go alongside or in any manner moor to any Government-owned vessel, mooring buoy, or pontoon boom, their anchor cables, or any of their appendages. No vessel other than a vessel under Federal supervision may obstruct or interfere in any manner with the mooring, unmooring, or servicing of vessels owned by the United States.

(9) The Captain of the Port may require any vessel in a designated anchorage area to moor with two or more anchors.

(10) Each vessel that will not have sufficient personnel on board to weigh anchor at any time shall anchor with two anchors with mooring swivel, unless otherwise authorized by the Captain of the Port.

(11) Deep-draft vessels shall take precedence over vessels of lighter draft in the deeper portions of all anchorages. Light-draft barges and vessels shall anchor away from the deeper portions of the anchorage so as not to interfere with the anchoring of deep-draft vessels. Should circumstances warrant, the Captain of the Port may require lighter draft vessels to move to provide safe anchorage, particularly in Anchorages 7 and 9, for deep-draft vessels.



(12) Barges towed in tandem to any anchorage shall nest together when anchoring.

(13) Each vessel that is notified by the Captain of the Port or his authorized representative to shift her position shall promptly shift her position.

(14) No person may use these anchorages for any purpose other than the purpose stated in these anchorage regulations.

(15) Where these regulations require that a vessel notify the Captain of the Port, the operator of the vessel shall transmit such report to the San Francisco Vessel Traffic Service.

**Note.**—Vessel Traffic Service guards VHF-FM Channel 13 (156.65 MHz) and Channel 16 (156.8 MHz).

(16) Nothing in this section may be construed as relieving any vessel or the owner or person in charge of any vessel from the penalties of law for obstructing or interfering with range lights or for not complying with the laws relating to lights, day signals, and fog signals and other navigation laws and regulations.

(17) The District Engineer, Corps of Engineers, may issue written permission for anchoring a single barge carrying explosives in quantities considered by the District Engineer as safe and necessary in the vicinity of work being done directly under the District Engineer supervision or under a Department of the Army permit. When issuing such a permit, the District Engineer shall prescribe the conditions under which the explosives must be stored and handled and shall furnish a copy of the permit and a copy of the rules and regulations for storing and handling to the Captain of the Port.

(b) *Naval Anchorages.* In addition to the General Regulations in paragraph (a) of this section, the following regulations apply to each naval anchorage described in this section.

(1) Naval anchorages are intended for public vessels of the United States, but may be used by other vessels when not required for use by public vessels.

(2) Other vessels using a naval anchorage shall promptly notify the Captain of the Port upon anchoring and upon departure and shall be prepared to move within one hour upon notice should the anchorage be required for public vessels.

(c) *Explosive Anchorages.* In addition to the General Regulations in paragraph (a) of this section, the following regulations apply to each explosives anchorage described in this section.

(1) Explosives anchorages and, where established, surrounding forbidden anchorage zones, are temporarily activated as needed by the Captain of

the Port. When not activated, explosives anchorages and surrounding forbidden anchorage zones become part of the general anchorage which encompasses them or, if not located within the boundaries of a general anchorage, become available for general navigation.

(2) Notice of activation and deactivation of explosives anchorages will be disseminated by Coast Guard Broadcast Notice to Mariners.

(3) Each vessel which anchors in an explosives anchorage or surrounding forbidden anchorage zone while such anchorage is not activated shall be prepared to move within one hour if the anchorage is activated.

(4) Unless otherwise authorized by the Captain of the Port:

(i) No vessel may anchor in an activated explosives anchorage except vessels loaded with, loading, or unloading explosives.

(ii) No vessel may enter or remain in an activated explosives anchorage except (A) vessels loaded with, loading or unloading explosives, (B) lighters or barges delivering cargo to or from such vessels, or (C) a tug authorized by paragraph (c)(7)(iii) of this section.

(iii) No vessel carrying explosives or on which explosives are to be loaded may enter or remain in an activated explosives anchorage without written permission from the Captain of the Port. Such a permit must be obtained before entering the anchorage and may be revoked at any time.

(iv) No vessel may anchor in the forbidden anchorage zone surrounding an activated explosives anchorage.

(5) Each vessel loaded with, loading, or unloading explosives, while within an explosives anchorage, shall display by day at her masthead, or at least 10 feet above the upper deck if the vessel has no mast, a red flag at least 16 square feet in area.

(6) Each passing vessel shall reduce speed as necessary so as to insure that its wake does not interfere with cargo transfer operations aboard any vessel displaying a red flag in an explosives anchorage.

(7) The Captain of the Port may:

(i) Issue permission to any vessel carrying flammable solids, oxidizing materials, corrosive liquids, flammable liquids, compressed gases, or poisonous substances to occupy a berth in an activated explosives anchorage. Such a permit must be obtained before entering the anchorage and may be revoked at any time.

(ii) Require any person having business on board a vessel which is loaded with, loading, or unloading explosives to have a document that is acceptable to the Coast Guard for

identification purposes and to show that document to the Captain of the Port.

(iii) Require a non-self-propelled vessel, or a self-propelled vessel that is unable to maneuver under its own power, that occupies an activated explosives anchorage to be attended by a tug.

#### (d) *Anchorage Grounds.*

(1) Table 110.224(d)(1) lists anchorage grounds, identifies the purpose of each anchorage, and contains specific regulations applicable to certain anchorages.

(2) The geographic boundaries of each anchorage are contained in paragraph (e) of this section.

TABLE 110.224(d)(1)

Anchorage No.	General location	Purpose	Specific regulations
3.....	San Francisco Bay .....	General.....	Note a.
4.....	do.....	do.....	Notes a,b.
5.....	do.....	do.....	Do.
6.....	do.....	do.....	Note a.
7.....	do.....	do.....	Notes
8.....	do.....	do.....	a,b,c,d,e.
9.....	do.....	do.....	Notes a,b.
10.....	do.....	Naval.....	Do.
12.....	do.....	Explosives.....	Note a.
13.....	do.....	do.....	Notes a,g.
14.....	do.....	do.....	Notes a,h.
18.....	San Pablo Bay.....	General.....	
19.....	do.....	do.....	Notes b,i.
20.....	do.....	do.....	
21.....	do.....	Naval.....	
24.....	Carquinez Strait.....	General.....	Note j.
25.....	do.....	do.....	Note j.
26.....	Suisun Bay.....	do.....	Note k.
27.....	do.....	do.....	
28.....	San Joaquin River.....	do.....	
30.....	do.....	Explosives.....	

NOTES.—a. When sustained winds are in excess of 25 knots each vessel greater than 300 gross tons using this anchorage shall maintain a continuous radio watch on VHF channel 13 (156.65 MHz) or, if unavailable, VHF channel 16 (156.80 MHz). This radio watch must be maintained by a person who fluently speaks the English language.

b. Each vessel using this anchorage may not project into adjacent channels or fairways.

c. This anchorage is primarily for use by vessels requiring a temporary anchorage waiting to proceed to pier facilities or other anchorage grounds. This anchorage may not be used by vessels for the purpose of loading any dangerous cargoes or combustible liquids unless authorized by the Captain of the Port.

d. Each vessel using this anchorage may not remain for more than 12 hours unless authorized by the Captain of the Port.

e. Each vessel using this anchorage shall be prepared to move within 1 hour upon notification by the Captain of the Port.

f. The maximum total quantity of explosives that may be on board a vessel using this anchorage shall be limited to 3,000 tons.

g. The maximum total quantity of explosives that may be on board a vessel using this anchorage shall be limited to 50 tons except that, with the written permission of the Captain of the Port, each vessel in transit, loaded with explosives in excess of 50 tons, may anchor temporarily in this anchorage provided that the hatches to the holds containing explosives are not opened.

h. Each vessel using this anchorage will be assigned a berth by the Captain of the Port on the basis of the maximum quantity of explosives that will be on board the vessel.

i. See § 204.215 of this title establishing a target practice area in San Pablo Bay adjacent to the westerly shore of Mare Island for use of the Mare Island Navy Yard.

j. Each vessel using this anchorage shall promptly notify the Captain of the Port upon anchoring and upon departure.

k. See § 162.270 of this title establishing restricted areas in the vicinity of the Maritime Administration Reserve Fleet.

#### (e) *Boundaries.*

(1) *Anchorage No. 3.* That portion of Belvedere Cove bounded by the shore



and a line beginning at latitude 37°52'20" N., longitude 122°27'02" W.; thence southwesterly to latitude 37°51'43" N., and longitude 122°27'25" W.

(2) *Anchorage No. 4.* Bounded by the west shore of San Francisco Bay and the following lines: Beginning on the shore southwest of Point San Quentin at latitude 37°56'28" N., longitude 122°28'54" W.; thence east-southeasterly to latitude 37°55'55" N., longitude 122°26'49" W.; thence southwesterly to latitude 37°54'13" N., longitude 122°27'24" W.; thence southeasterly to the shore of Tiburon Peninsula at Point Chauncey at latitude 37°53'40.5" N., longitude 122°26'55" W. When Explosives Anchorage No. 13 is activated by the Captain of the Port, it and the forbidden anchorage zone surrounding it are excluded from Anchorage No. 4.

(3) *Anchorage No. 5.* In San Francisco Bay beginning on the northwest shore of Red Rock at latitude 37°55'48" N., longitude 122°25'52" W.; thence westerly to San Francisco Bay North Channel Lighted Buoy 14 at latitude 37°55'50" N., longitude 122°26'32.4" W.; thence southerly to San Francisco Bay North Channel Lighted Buoy 12 at latitude 37°54'49" N., longitude 122°26'39" W.; thence southeasterly to latitude 37°53'23" N., longitude 122°25'09" W.; thence northerly to Southampton Shoal Channel Lighted Buoy 5 at latitude 37°55'19" N., longitude 122°25'33" W.; thence to the southeast shore of Red Rock at latitude 37°55'42" N., longitude 122°25'45" W.; thence along the shoreline to the point of beginning.

(4) *Anchorage No. 6.* Bounded by the east shore of San Francisco Bay and the following lines: Beginning at the shore of the southernmost extremity of Point Isabel at latitude 37°53'46" N., longitude 122°19'19" W.; thence westerly along the north shore of Brooks Island to the jetty extending westerly therefrom; thence westerly along the jetty to its bayward end at latitude 37°54'13" N., longitude 122°23'27" W.; thence south-southeasterly to latitude 37°49'53" N.; longitude 122°21'39" W.; thence southeasterly to latitude 37°49'32.5" N., longitude 122°21'20.5" W.; thence easterly to latitude 37°49'34" N., longitude 122°20'13" W.; thence east-southeasterly to latitude 37°49'30" N., longitude 122°19'45.5" W.; thence east-northeasterly to the shore at Emeryville at latitude 37°50'04" N., longitude 122°17'41" W.; excluding from this area, however, the channel to Berkeley Marina delineated by lines joining the following points:

37°52'03" N.,	122°19'17.5" W.
37°52'00" N.,	122°19'15.5" W.
37°51'01" N.,	122°22'07" W.
37°50'43" N.,	122°22'00" W.
37°50'53" N.,	122°21'32" W.
37°51'47" N.,	122°18'59" W.

(5) *Anchorage No. 7.* In San Francisco Bay bounded by the west shore of Treasure Island and the following lines: Beginning at the westernmost point of Treasure Island at latitude 37°49'36" N., longitude 122°22'40" W.; thence northwesterly to latitude 37°50'00" N., longitude 122°22'57" W.; thence westerly to San Francisco Bay North Channel Lighted Buoy 2 at latitude 37°50'00" N., longitude 122°23'44" W.; thence southerly to latitude 37°49'22.5" N., longitude 122°23'44" W.; thence southeasterly to latitude 37°48'40.5" N., longitude 122°22'38" W.; thence to the shore of Treasure Island at latitude 37°48'51.1" N., longitude 122°22'13" W.

(6) *Anchorage No. 8.* In San Francisco Bay bounded by the west shore of the Naval Air Station, Alameda, and the following lines: Beginning at Oakland Inner Harbor Light 2 at latitude 37°47'52" N., longitude 122°19'54" W.; thence west-northwesterly to latitude 37°48'03" N., longitude 122°20'57.5" W.; thence south-southwesterly to latitude 37°47'56" N., longitude 122°21'22.5" W.; thence southwesterly to latitude 37°47'26" N., longitude 122°21'41" W.; thence south-southeasterly to latitude 37°47'00" N., longitude 122°21'30" W.; thence southeasterly to Alameda Naval Air Station Channel Entrance Lighted Bell Buoy 1 at latitude 37°46'38" N., longitude 122°20'24" W.; thence easterly to latitude 37°46'37" N., longitude 122°19'56" W.; thence northerly to the shore of the Naval Air Station, Alameda, at latitude 37°46'57" N., longitude 122°19'52.5" W.

(7) *Anchorage No. 9.* In San Francisco Bay bounded on the north by the shore, the breakwater and turning basin at the Alameda Naval Air Station and a line beginning at the Alameda Naval Air Station Channel Light 6 at latitude 37°46'23" N., longitude 122°19'02" W.; thence westerly to the Alameda Naval Air Station Channel Entrance Lighted Buoy 2 at latitude 37°46'27" N., longitude 122°20'24.5" W.; thence west-southwesterly to the San Francisco Bay South Channel Lighted Buoy 1 at latitude 37°46'08" N., longitude 122°21'45" W.; thence south-southeasterly to San Bruno Shoal Channel Light 1 at latitude 37°41'44" N., longitude 122°20'17.5" W.; thence south-southeasterly to San Bruno Shoal Channel Light 5 at latitude 37°38'37" N., longitude 122°18'43" W.; thence southeasterly to latitude 37°36'05" N., longitude 122°14'13.5" W.; thence east-northeasterly to the shore at latitude

37°37'38.5" N., longitude 122°09'02" W., and bounded on the east by the shore; including all of San Leandro Bay excluding the pipeline areas therein. When Explosives Anchorage No. 12 or No. 14 is activated by the Captain of the Port, that anchorage and the forbidden anchorage zone surrounding it are excluded from Anchorage No. 9.

(8) *Anchorage No. 10.* In San Francisco Bay bounded by the east shore of Sausalito and the following lines: Beginning on the shore of Sausalito at latitude 37°51'20" N., longitude 122°28'38" W.; thence southeasterly to latitude 37°50'57.5" N., longitude 122°27'57" W.; thence southwesterly to the shore of Sausalito at latitude 37°50'36" N., longitude 122°28'34" W.

(9) *Anchorage No. 12.* In San Francisco Bay east of the city of San Francisco a circular area having a radius of 500 yards centered at latitude 37°44'32.5" N., longitude 122°20'27.5" W. A 667-yard-wide forbidden anchorage zone surrounds this anchorage.

(10) *Anchorage No. 13.* In San Francisco Bay east of the Tiburon Peninsula a circular area having a radius of 333 yards centered at latitude 37°55'26" N., longitude 122°27'27" W. A 667-yard-wide forbidden anchorage zone surrounds this anchorage except where such zone would extend beyond the limits of Anchorage No. 4.

**Note:** See § 110.224(e)(2) for a description of Anchorage No. 4.

(11) *Anchorage No. 14.* In San Francisco Bay east of Hunters Point an area 1,000 yards wide and 2,760 yards long, the end boundaries of which are semicircles, with radii of 500 yards and center, respectively at latitude 37°42'52" N., longitude 122°19'32.5" W., and latitude 37°42'14" N., longitude 122°18'47" W.; and the side boundaries of which are parallel tangents joining the semicircles. A 667-yard-wide forbidden anchorage zone surrounds this anchorage.

(12) *Anchorage No. 18.* In San Pablo Bay bounded by the west shore of San Pablo Bay and the following lines: Beginning at the shore at Point San Pedro at latitude 37°59'16" N., longitude 122°26'47" W.; thence easterly to latitude 37°59'16" N., longitude 122°26'26" W.; thence northerly to latitude 38°03'46" N., longitude 122°25'52.5" W.; thence northwesterly to the shore south of the entrance to Novato Creek at latitude 38°05'13.5" N., longitude 122°29'04" W.; excluding from this area, however, the channel to Hamilton Field and the extension of this channel easterly to the boundary of the

Latitude	Longitude
37°52'08" N.,	122°19'07" W.



anchorage, and the pipeline area therein.

(13) *Anchorage No. 19.* In San Pablo Bay bounded by the northeast shore of San Pablo Bay and the following lines: Beginning at the shore of Tubbs Island at latitude 38°07'39" N., longitude 122°25'18" W.; thence southerly to latitude 38°00'36" N., longitude 122°25'20" W.; thence northeasterly to latitude 38°03'13" N., longitude 122°19'46" W.; thence east-northeasterly to latitude 38°03'37" N., longitude 122°17'13" W.; thence northerly to the long dike extending southwesterly from Mare Island at latitude 38°03'52.5" N., longitude 122°17'10" W.; thence along the long dike to the shore at Mare Island.

(14) *Anchorage No. 20.* In San Pablo Bay bounded by the southeast shore of San Pablo Bay and the following lines: Beginning at the northeast corner of Parr Terminal No. 4 at Point San Pablo at latitude 37°57'59" N., longitude 122°25'35" W.; thence northeasterly to latitude 38°01'27.5" N., longitude 122°21'33" W.; thence east-northeasterly to the Union Oil Co. pier at Oleum at latitude 38°03'18" N., longitude 122°15'37" W.; and thence along this pier to the shore.

(15) *Anchorage No. 21.* In San Pablo Bay south of Mare Island a rectangular area beginning at latitude 38°03'56" N., longitude 122°15'56" W.; thence easterly to latitude 38°04'02" N., longitude 122°15'20" W.; thence southerly to latitude 38°03'48" N., longitude 122°15'16" W.; thence westerly to latitude 38°03'42" N., longitude 122°15'52" W.; thence northerly to the point of beginning.

(16) *Anchorage No. 24.* Bounded by the north shore of Carquinez Strait and the following lines: Beginning on the shore at Dillon Point at latitude 38°03'44" N., longitude 122°11'29" W.; thence southeasterly to latitude 38°03'34" N., longitude 122°11'10" W.; thence south-southeasterly to latitude 38°03'17" N., longitude 122°11'04" W.; thence southeasterly to the shore of Benicia at latitude 38°02'37.5" N., longitude 122°09'55" W.

(17) *Anchorage N. 25.* Bounded by the south shore of Carquinez Strait and the following lines: Beginning on the shore at Point Carquinez at latitude 38°02'09" N., longitude 122°10'22" W.; thence east-southeasterly to latitude 38°01'47" N., longitude 122°08'57" W.; thence southeasterly to the shore of Martinez at latitude 38°01'20" N., longitude 122°08'42" W.

(18) *Anchorage N. 26.* On the west side of Suisun Bay, adjacent to and northeast of the city of Benicia within the following boundaries: Beginning on

the shore northeast of Army Point at latitude 38°02'54" N., longitude 122°07'37" W.; thence south-southeasterly along the Southern Pacific bridge to latitude 38°02'38" N., longitude 122°07'24" W.; thence easterly to latitude 38°02'42" N., longitude 122°07'07.5" W.; thence northeasterly to latitude 38°05'42" N., longitude 122°04'06" W.; thence northwesterly to the shore at latitude 38°05'58" N., longitude 122°04'28" W.; thence along the shore to the point of beginning.

(19) *Anchorage No. 27.* In the northeast portion of Suisun Bay bounded by the north shore and the following lines: Beginning on the shore of Grizzly Island at latitude 38°08'13" N., longitude 122°02'42.5" W.; thence southerly to tripod at Preston Point on Roe Island at latitude 38°04'16" N., longitude 122°02'42" W.; thence along the south shore of Roe Island to latitude 38°04'05" N., longitude 122°01'35" W.; thence east-southeasterly to latitude 38°03'42.5" N., longitude 121°58'54" W.; thence easterly to the shore of Chipps Island at latitude 38°03'42.5" N., longitude 122°55'05" W.

(20) *Anchorage No. 28.* The area bounded on the east by the shore of Lower Sherman Island and the following lines: Beginning at Point Sacramento on Lower Sherman Island at latitude 38°03'45" N., longitude 121°50'17.5" W.; thence southwesterly to latitude 38°03'37.5" N., longitude 121°50'31" W.; thence south-southeasterly to latitude 38°02'11" N., longitude 121°49'58" W.; thence to the shore of Lower Sherman Island at latitude 38°02'23" N., longitude 121°49'49" W.

(21) *Anchorage No. 30.* The portion of the Old San Joaquin River Channel bounded on the west by the shore of Mandeville Point and the following lines: Beginning on the shore of Mandeville Point at latitude 38°04'01" N., longitude 121°32'05" W.; thence northeasterly to latitude 38°04'07.5" N., longitude 121°31'58" W.; thence southeasterly to latitude 38°03'47" N., longitude 121°31'42.5" W.; thence westerly to the shore of Mandeville Point at latitude 38°03'47.5" N., longitude 121°31'56" W.

## PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

In consideration of the foregoing, part 162 of Title 33, Code of Federal Regulations, is amended as follows:

3. The authority citation for Part 162 is revised to read as follows:

Authority: (33 U.S.C. 1231); 49 CFR 1.46(n)(4).

4. Paragraph (d) is added to § 162.205 to read as follows:

§ 162.205 San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, Sacramento River and connecting Waters, Calif.

(d) Sacramento River, Decker Island Restricted Anchorage for Vessels of the U.S. Government—(1) The anchorage ground. An elongated area in the Sacramento River bounded on the west by the shore of Decker Island and the following lines: Beginning on the shore at Decker Island North End Light at latitude 38°06'16" N., longitude 121°42'32.5" W.; thence easterly to latitude 38°06'15" N., longitude 121°42'27" W.; thence southerly to latitude 38°05'22" N., longitude 121°42'30" W.; thence southwesterly to latitude 38°05'08" N., longitude 121°42'40" W.; thence west southwesterly to latitude 38°05'02" N., longitude 121°42'50" W.; thence northwesterly to the shore of Decker Island at latitude 38°05'04" N., longitude 121°42'52.5" W. (2) Special Regulation. No Vessel or other craft except those owned by or operating under contract with the United States may navigate or anchor within 50 feet of any moored Government vessel in the area. Commercial and pleasure craft shall not moor to buoys or chains of Government vessels, nor may they, while moored or underway, obstruct the passage of Government or other vessels through the area.

Dated: March 21, 1986.

John D. Costello,  
Vice Admiral, U.S. Coast Guard, Commander,  
Twelfth Coast Guard District.

[FR Doc. 86-8016 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-14-M

## 33 CFR Part 117

[CGD 75-50]

## Drawbridge Operation Regulations; Okeechobee Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of Lee County the Coast Guard is changing the regulations governing the Sanibel Causeway drawbridge by permitting the number of openings to be limited during certain periods. This change is being made because vehicular traffic has increased. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation. Editorial changes in the regulations governing other Okeechobee Waterway drawbridges are also included in this rule.



**EFFECTIVE DATE:** These regulations become effective on May 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On November 12, 1985 the Coast Guard published (50 FR 46674) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on November 26, 1985. In each notice interested persons were given until December 27, 1985 to submit comments.

#### Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

#### Discussion of Comments

Four letters were received in response to the proposal. One suggested that neither water nor land traffic were of sufficient volume to justify year-round regulations. Another suggested use of a countdown clock to space draw openings. Both Lee County and the city of Sanibel supported the proposed rule but requested that it be applicable seven days a week. Weekend regulations are beyond the scope of the proposed rulemaking but may be the subject of future rulemaking.

#### Editorial Changes

The final rule also incorporates minor editorial changes in the regulations governing Okeechobee Waterway drawbridges. These nonsubstantive changes are intended to improve readability. Certain draws are now required to open at all times for "vessels in distress." The written rule requires their opening for "vessels in a situation where a delay would endanger life or property," a term that more accurately describes the intent of the existing rule. The mileage identification at certain bridges has been changed slightly to agree with Corps of Engineers practice. These editorial changes were not preceded by a notice of proposed rulemaking because the Coast Guard has found that, since the changes merely clarify the existing rule, notice and public procedure thereon are unnecessary.

#### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows.

Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.317 is revised to read as follows:

##### § 117.317 Okeechobee Waterway.

(a) *Exempt Vessels.* This term means public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property.

(b) *Evans Crary (SR AIA) bridge, mile 3.4 at Stuart.* The draw shall open on signal; except that, from November 1 to May 1 from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday, except federal holidays, the draw need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and federal holidays November 1 to May 1 from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. Exempt vessels shall be passed at any time.

(c) *Florida East Coast Railroad bridge, mile 7.4 at Stuart.* The draw shall operate as follows:

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the navigation lights go to flashing red and a horn sounds four blasts, pauses, and then repeats four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(d) *Roosevelt (US 1) bridge, mile 7.4 at Stuart.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m., 11 a.m. to 1 p.m., and 4 p.m. to 7 p.m., Monday through Friday except federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays and federal holidays from 8 a.m. to 6 p.m. the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. When the adjacent Florida East Coast Railway bridge is in the closed position at the time of a scheduled opening the draw need not open for eastbound vessels but must open on signal immediately upon the opening of the Railroad bridge to pass all accumulated vessels. Exempt vessels shall be passed at any time.

(e) *Seaboard System Railroad bridge, mile 28.2 at Indiantown.* The draw shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least three hours notice is given.

(f) *Florida East Coast Railroad bridge, mile 38.0 at Port Mayaca.* The draw shall operate as follows:

(1) The bridge is not constantly tended.

(2) The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the navigation lights go to flashing red and a horn sounds four blasts, pauses, and then repeats four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(g) *Belle Glade Dike (SR 71) bridge, mile 60.7 between Torry Island and Lake Shore.* The draw shall open on signal from 7 a.m. to 6 p.m. Monday through Thursday, and from 7 a.m. to 7 p.m. Friday through Sunday. At all other times, the draw need not be opened for the passage of vessels.

(h) *Seaboard System Railroad bridge, mile 78.3 at Moore Haven.* The draw shall open on signal; except that, from 10 p.m. to 6 a.m. the draw need not be opened for the passage of vessels.

(i) *Highway bridges at Moore Haven (mile 78.4) La Belle (mile 103.0), Denaud (mile 108.2), Alva (mile 116.0), and Olga (mile 126.3).* The draws shall open on signal; except that, from 10 p.m. to 6 a.m.



the draws shall open on signal if at least three hours notice is given.

(j) *Edison Memorial (US 41) bridge, mile 134.5 at Fort Myers.* The draw shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and from 5 p.m. to 6 p.m. Monday through Friday except federal holidays the draw need not be opened for the passage of vessels. Exempt vessels shall be passed at any time.

(k) *Sanibel Causeway bridge, mile 151 at Punta Rassa.* The draw shall open on signal; except that, from 3:45 p.m. to 4:45 p.m. Monday through Friday except federal holidays the draw need open only at 4:15 p.m. Exempt vessels shall be passed at any time.

Dated: March 27, 1986.

R.P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 86-8018 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 117

[CGD7 85-55]

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of the South Carolina Department of Highways and Public Transportation the Coast Guard is changing the regulations governing the Limehouse Bridge, mile 479 at Johns Island, by permitting the number of openings to be limited during certain periods. This change is being made because of complaints of delays to vehicular traffic. This action will accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

**EFFECTIVE DATE:** These regulations become effective on May 12, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Walt Paskowsky, (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** On January 6, 1986 the Coast Guard published (51 FR 402) a proposal to revise these regulations. The proposed regulations were also published in a public notice issued by Commander, Seventh Coast Guard District on January 21, 1986. In each notice interested persons were given until February 20, 1986 to submit comments.

#### Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

#### Discussion of Comments

Four letters were received in response to the proposal. Three cited the rapid development of the area in their support of the proposal. One supported two openings per hour on the quarter and three quarter hour. This is considered unduly restrictive to navigation during peak vessel traffic periods. The same writer suggested that signs be placed in the waterway advising boaters of the opening times. This matter is addressed in 33 CFR 117.55. One also supported unrestricted vehicular access for the nearby Maybank Highway bridge over the Stono River. The operation of that drawbridge was the subject of a prior review.

#### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.911 is amended by revising paragraph (e) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(e) *John Limehouse bridge across the Stono River, mile 479.3 at Johns Island.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday except federal holidays, the draw need open

only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

\* \* \* \* \*

Dated: March 31, 1986.

R. P. Cueroni,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 86-8015 Filed 4-9-86; 8:45 am]

BILLING CODE 1910-14-M

### 33 CFR Part 117

[CGD7-85-57]

#### Drawbridge Operation Regulations; Back River, GA

AGENCY: Coast Guard, DOT.

ACTION: Final rule revocation.

**SUMMARY:** This amendment revokes the regulations for the St. Simons Island Causeway drawbridge across Back River because the bridge has been replaced by a fixed bridge.

**EFFECTIVE DATE:** This revocation is effective on April 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** This rule was not preceded by a notice of proposed rulemaking because it deletes a provision that is of no force. Therefore notice and public procedure thereon are unnecessary.

#### Drafting Information

The drafters of these regulations are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

#### Economic Assessment and Certification

This rule is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. We conclude this because the rule merely deletes an inoperative provision from the regulations. Accordingly, the Coast Guard certifies that this action will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:



**PART 117—DRAWBRIDGE  
OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

**§ 117.355 [Removed]**

2. Section 117.355 is removed.

Dated: March 27, 1986.

R.P. Cuaroni,

Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 86-8017 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-14-M

**VETERANS ADMINISTRATION****38 CFR Part 21****Veterans Education; Suspension of  
Participation in VEAP; Correction**

AGENCY: Veterans Administration.

ACTION: Final rule; correction.

**SUMMARY:** The Veterans Administration published a final rule in the Federal Register of January 21, 1986 at pages 2694 and 2695, implementing provisions of the Department of Defense Authorization Act, 1985. This document is to correct a reference contained in the section of the regulations which was changed.

**FOR FURTHER INFORMATION CONTACT:**

William Susling, Education Service,  
Department of Veterans Benefits,  
Veterans Administration, (202) 389-2554.

**§ 21.5054 [Corrected]**

38 CFR Part 21 is hereby corrected by changing the reference in § 21.5054(a) from § 21.504(b) (4) and (5) to § 21.5040(f) (4) and (5).

Dated: April 4, 1986.

Mae Conry,

Acting Chief, Directives Management  
Division.

[FR Doc. 86-7960 Filed 4-9-86; 8:45 am]

BILLING CODE 8320-01-M

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 52**

[A-8-FRL-2999-8]

**Approval and Promulgation of State  
Implementation Plans; New Colorado  
Regulation on the Sale of New Wood  
Stoves**

AGENCY: Environmental Protection  
Agency.

**ACTION: Final rule.**

**SUMMARY:** This notice approves a new Colorado Regulation 4, "Regulation on the Sale of New Wood Stoves". This regulation requires all new wood stoves sold after January 1, 1987, to be certified to meet emission standards for particulates and carbon monoxide (CO), with more stringent emission standards taking effect on July 1, 1988. The regulation will provide additional reductions in emissions of particulates and CO.

**DATES:** This action will be effective on (June 9, 1986) unless notice is received by (May 12, 1986) that someone wishes to submit adverse or critical comments. Such notice may be submitted to Robert R. DeSpain at the EPA Regional office listed in the address section below.

**ADDRESSES:**

Environmental Protection Agency,  
Region VIII, Air Programs Branch, 999  
18th Street, Suite 1300, Denver,  
Colorado 80202.

Copies of the revision are available  
for public inspection between 8:00 a.m.  
and 4:00 p.m. Monday through Friday at  
the following offices:

Environmental Protection Agency,  
Region VIII, Air Programs Branch,  
One Denver Place, Suite 1300, 999 18th  
Street, Denver, Colorado 80202.

Environmental Protection Agency,  
Public Information Reference Unit,  
Waterside Mall, 401 M Street SW.,  
Washington, DC 20460.

Office of the Federal Register, 1100 L  
Street NW., Room 8401, Washington,  
DC.

**FOR FURTHER INFORMATION CONTACT:**

Dale Wells, Air Programs Branch,  
Environmental Protection Agency, One  
Denver Place, Suite 1300, 999 18th Street,  
Denver, Colorado 80202, (303) 293-1773,  
FTS 564-1773.

**SUPPLEMENTARY INFORMATION:**

Colorado Regulation 4 was approved by the  
Colorado Air Quality Control  
Commission on June 27, 1985, and was  
submitted by the Governor as a State  
Implementation Plan (SIP) revision on  
July 18, 1985. This action will provide  
additional reductions in CO and  
particulate emissions from new wood  
stoves. The regulation is consistent with  
EPA requirements and, therefore, is  
being approved.

EPA is publishing this action without  
prior proposal because the Agency  
views this as a noncontroversial  
amendment and anticipates no adverse  
comments. This action will be effective  
60 days from the date of this Federal  
Register unless, within 30 days of its  
publication, notice is received that

adverse or critical comments will be  
submitted.

If such notice is received, this action  
will be withdrawn before the effective  
date by publishing two subsequent  
notices. One notice will withdraw the  
final action and another will begin a  
new rulemaking by announcing a  
proposal of the action and establishing a  
comment period. If no such comments  
are received, the public is advised that  
this action will be effective (June 9,  
1986.)

Under 5 U.S.C., section 605(b), I certify  
that this SIP revision will not have a  
significant impact on a substantial  
number of small entities (see 46 FR  
8709).

Under section 307(b)(1) of the Clean  
Air Act, petitions for judicial review of  
this action must be filed in the United  
States Court of Appeals for the  
appropriate circuit by (June 9, 1986).  
This action may not be challenged later  
in proceedings to enforce its  
requirements (See 307(b)(2)).

The Office of Management and Budget  
has exempted this rule from the  
requirements of section 3 of Executive  
Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control, Particulates and  
carbon monoxide, Incorporation by  
reference.

**Note:** Incorporation by reference of the  
State Implementation Plan for the State of  
Colorado was approved by the Director of the  
Federal Register on July 1, 1982.

Dated: March 10, 1986.

Lee M. Thomas,  
Administrator.

**PART 52—[AMENDED]**

Part 52 Chapter I, Title 40 of the Code  
of Federal Regulations is amended as  
follows:

**Subpart G—Colorado**

1. The authority citation for Part 52  
continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.320 is amended by  
adding paragraph (c)(35) as follows:

**§ 52.320 Identification of plan.**

\* \* \*

(c) \* \* \*

(35) Colorado Air Pollution Control  
Commission Regulation No. 4,  
"Regulation on the Sale of New Wood  
Stoves", submitted by the Governor on  
July 18, 1985.

(i) Incorporation by Reference.

(A) Colorado Air Quality Control  
Commission Regulation No. 4.,



"Regulation on the Sale of New Wood Stoves", adopted June 27, 1985.

[FR Doc. 86-7940 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[A-3-FRL-2999-9; EPA Docket No. AM602 DC]

### Approval and Promulgation of Air Quality Implementation Plans; 1982 Ozone and Carbon Monoxide State Implementation Plan for the District of Columbia

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is today approving the Inspection and Maintenance (I/M) portion of the 1982 District of Columbia State Implementation Plan (SIP) revision for Ozone and Carbon Monoxide. The Ozone (O<sub>3</sub>) and Carbon Monoxide (CO) SIP provides for the attainment and maintenance of the primary National Ambient Air Quality Standards (NAAQS) for O<sub>3</sub> and CO as required under part D of the Clean Air Act Amendments of 1977.

Approval of the I/M portion results in the full approval of the O<sub>3</sub>/CO SIP in its entirety.

**EFFECTIVE DATE:** This action is a direct final rule and is effective June 9, 1986 unless notice is received by May 12, 1986 that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Copies of the SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patricia S. Gaughan (3AM11).

Department of Consumer and Regulatory Affairs, Environmental Control Division, Bureau of Air Quality, 5010 Overlook Avenue SW., Washington, DC 20032, Attn: Donald Wambsgans.

Public Information Reference Unit, U.S. Environmental Protection Agency, EPA Library, Room 2922, 401 M Street SW., Washington, DC 20460.

The Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jacqueline Pine (3AM13) at the EPA address stated above or call 215/597-4554.

#### SUPPLEMENTARY INFORMATION: Background

On October 3, 1984 EPA published a final rulemaking Notice in the *Federal Register* (49 FR 39059), with the determination that the District of Columbia had met most of the Part D requirements of the Clean Air Act for O<sub>3</sub> and CO. The above final rulemaking action approved all of the District of Columbia's 1982 State Implementation Plan (SIP) except for the Inspection and Maintenance portion, which EPA took no action on. The I/M portion must consist of several elements necessary for approval.<sup>1</sup> All but one of these required elements were considered acceptable as stated in the December 7, 1983 (48 FR 54833) and October 3, 1984 *Federal Register* Notices.<sup>2</sup> The remaining I/M element of the District's 1982 SIP lacked the proper regulations for its sticker issuance procedures. Prior to correction of the deficiency, a vehicle could pass all safety related requirements during the inspection, fail the I/M test, and still receive an approval sticker. The fact that the District's regulations did not specifically prohibit a vehicle from receiving an approval sticker when passing all safety items and failing the I/M test, required corrective action. The October 3, 1984, Notice requested that the District clarify its legal authority in this area by amending its regulations.

On November 28, 1984, the District of Columbia's Department of Public Works announced the adoption of the amended regulation to Title 18 of the District's Municipal Regulations.

The amended regulation was then submitted to EPA on May 3, 1985 as a revision to the District's 1982 State Implementation Plan. This revision corrects the deficiency identified in the October 3, 1984 Notice. The amended regulation allows for the issuance of an approval sticker only when the vehicle passes the safety items and the subsequent I/M emissions test. Failure to pass any safety items or the I/M test requires the issuance of a rejection sticker.

#### EPA Action

EPA is today taking direct final action to approve the District's 1982 O<sub>3</sub>/CO SIP in its entirety, as all sections of the SIP, including the I/M section, meet the requirements of an acceptable plan for achieving the necessary emission reductions of O<sub>3</sub> and CO. The I/M portion being approved today, together with the previously approved portions,

completely demonstrate that the standards for O<sub>3</sub> and CO will be attained by 1987. This approval is based on EPA's determination that the plan meets the requirements of sections 110(a)(2)(A)-(K), 110(a)(3), and 172 of the Clean Air Act as amended, and EPA regulations in 40 CFR Part 51.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. This action will be effective 60 days from the date of this *Federal Register* Notice unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and the other will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 9, 1986.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for appropriate circuit by June 9, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

**Note.**—Incorporation by reference of the State Implementation Plan for the District of Columbia was approved by the Director of the Federal Register on July 1, 1982.

Dated: March 10, 1985.

Lee M. Thomas,  
Administrator.

#### PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### Subpart J—District of Columbia

1. The authority citation for Part 52 continues to read as follows:

<sup>1</sup> The 1982 SIP policy published on January 22, 1981 (46 FR 7182) discusses these requirements.

<sup>2</sup> I/M elements previously submitted and approved do not need to be resubmitted. 46 FR 7182.



Authority: 42 U.S.C. 7401-7642.

2. Section 52.470 is amended by adding paragraph (c)(26) as follows:

**§ 52.470 Identification of plan.**

(c) \* \* \*

(26) Revision to the 1982 District of Columbia Ozone and Carbon Monoxide Attainment Plan consisting of an approvable vehicle emission inspection and maintenance program, therefore, completing all necessary requirements for attainment of the Ozone and Carbon Monoxide standards; submitted by the Mayor on May 3, 1985. See paragraph (c)(25) of this section for date of original submittal.

(i) Incorporation by reference.

(A) Amendment to section 604 (Vehicle Inspection: Rejected Vehicles) of Title 18 of the District of Columbia Municipal Regulations as published in the *District of Columbia Register* on November 23, 1984.

[FR Doc. 86-7943 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

**40 CFR Part 52**

[A-10-FRL-2999-7]

**Approval and Promulgation of Air Quality Implementation Plans; Oregon**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA today approves a visibility monitoring program, submitted on September 25, 1984, and amendments to the Oregon Department of Environmental Quality (DEQ) new source review rule related to assessment of visibility impacts, submitted on September 25, 1984, and amended on October 22, 1985, as revisions to the Oregon State Implementation Plan (SIP). These revisions were submitted to satisfy requirements of Section 110 (Implementation Plans) and Section 169A (Visibility Protection) of the Clean Air Act (hereinafter the Act).

**EFFECTIVE DATE:** This action will be effective on June 9, 1986 unless notice is received before May 12, 1986 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment period on this action.

**ADDRESSES:** Copies of the materials submitted to EPA may be examined during normal business hours at: Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Air Programs Branch (10A-85-21), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

State of Oregon, Department of Environmental Quality, Yeon Building, 522 SW Fifth Avenue, Portland, Oregon 97207.

Copies of the State's submittal may be examined at: The Office of Federal Register, 1100 L Street NW., Room 8401, Washington, DC.

Comments should be addressed to: Laurie M. Kral, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

**FOR FURTHER INFORMATION CONTACT:** David C. Bray, Air Programs Branch, M/S 532, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-4253, FTS: 399-4253.

**SUPPLEMENTARY INFORMATION:** On September 25, 1984, the Oregon Department of Environmental Quality (DEQ) submitted its "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS" (OAR 340-20-047, Section 5.2) as a revision to the Oregon State Implementation Plan (SIP). This new Section contains seven subsections as follows:

5.2.1 *Definitions*, which defines the terms "Class I Areas," "Significant impairment," and "Visibility impairment";

5.2.2 *Introduction*, which outlines the background and goals of the Oregon visibility protection plan;

5.2.3 *Visibility Monitoring*, which describes the DEQ's visibility monitoring strategy;

5.2.4 *New Source Review*, which references the DEQ New Source Review rules (OAR 340-20-220 through 275); and

5.2.5 *Best Available Retrofit Technology*, 5.2.6 *Integral Vistas*, and 5.2.7 *Control Strategies*, all noted as "Reserved."

Sections 5.2.1 *Definitions*, and 5.2.2 *Introduction* are general in nature and consistent with the provisions of 40 CFR Part 51, Subpart P Protection of Visibility. EPA is therefore approving these two sections as revisions to the Oregon SIP.

Section 5.2.3 *Visibility Monitoring*, which sets forth DEQ's visibility monitoring strategy, satisfies the requirements of 40 CFR 51.305. Furthermore, on May 14, 1985, DEQ submitted a detailed description of Oregon's visibility monitoring program. This document is included in the docket for this rulemaking and is available for review at the locations listed in the ADDRESSES section. EPA is approving

this section as a revision to the Oregon SIP.

Section 5.2.4 *New Source Review* simply references the DEQ New Source Review (NSR) rules, which were amended to include visibility review provisions and submitted along with Section 5.2. EPA is therefore approving this section as a revision to the Oregon SIP.

EPA is taking no action on Sections 5.2.5 through 5.2.7 since they are only reserved for future submittals.

On September 25, 1984, and October 22, 1985, DEQ submitted amendments to its new source review rules (OAR 340-20-220 through 276) to incorporate visibility protection provisions. Specifically, Section 340-20-225 "Definitions" was amended by adding definitions of the terms "Class I area," "Federal Land Manager," "Significant impairment," and "Visibility impairment." Subsections 340-30-230(1) (e) and (f) were amended to include visibility impacts in the information required to be submitted by the source owner or operator. Subsection 340-20-245(3) was amended to clarify an exemption for modifications which do not significantly impact designated nonattainment areas. Subsection 340-20-245(5) was amended to clarify the requirements for preapplication ambient air quality monitoring. Subsection 340-20-245(7) was amended to expand the Federal Land Manager's involvement in the permit process.

And, a new Section 340-20-276 "Visibility Impact" was added which sets forth the substantive and procedural requirements for the review of visibility impacts from new major sources and major modifications. These provisions satisfy the requirements of 40 CFR 51.307 and therefore, EPA is approving the amendments to the NSR rules as a revisions to the Oregon SIP.

In summary, EPA today approves the following submittals as revisions to the Oregon SIP:

(1) OAR 340-20-047, Section 5.2, subsections 5.2.1, 5.2.2, 5.2.3, and 5.2.4, submitted on 9/25/84;

(2) OAR 340-20-225, OAR 340-20-230(1)(e), and (f), OAR 340-20-245(5), and OAR 340-20-245(7), submitted on 9/25/84; and

(3) OAR 340-20-245(3) and OAR 340-20-276, submitted on 9/25/84, and amended on 10/22/85.

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of the revisions approved herein, the



action on those revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on those revisions and establish a comment period.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 1986. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Reporting and Recordkeeping requirements.

Dated: February 7, 1986.

Lee M. Thomas,  
Administrator.

Note.—Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1982.

#### PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is amended as follows:

##### Subpart MM—Oregon

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1970 is revised by adding paragraph (c)(74) as follows:

#### § 52.1970 Identification of plan.

(c) \* \* \*

(74) On September 25, 1984, the State of Oregon Department of Environmental Quality submitted an amendment to OAR 340-20-047, specifically Section 5.2 "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS." On September 25, 1984, October 22, 1985, and March 19, 1986, the State of Oregon Department of Environmental Quality submitted amendments to the "New Source Review" rules, specifically, amendments to OAR 340-20-225, OAR 340-20-

230(1)(e) and (f), OAR 340-20-245(5), and OAR 340-20-245(7) (submitted on 9/25/84), amendments to OAR 340-20-245(3) (submitted on 9/25/84 and 10/22/85), OAR 340-20-276 (submitted on 9/25/84), and amendments to OAR 340-20-276(1) (submitted on 10/22/85 and 3/19/86).

(i) Incorporation by reference.  
(A) Letter of September 25, 1984 from the Oregon State Department of Environmental Quality to EPA Region 10. Revisions to the Oregon Administrative Rules, Chapter 340, Division 20, adopted by the Environmental Quality Commission on September 14, 1984, as follows:

(1) OAR 340-20-047, Section 5.2 "VISIBILITY PROTECTION PLAN FOR CLASS I AREAS," except for "Reserved" subsections 5.2.5 "Best Available Retrofit Technology," 5.2.6 "Integral Vistas," and 5.2.7 "Control Strategies;"

(2) OAR 340-20-225 "Definitions" as amended;

(3) OAR 340-20-230 "Procedural Requirements," subsection (1) "Information Required," paragraphs (e) and (f) as amended;

(4) OAR 340-20-245 "Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)," subsection (5) "Air Quality Monitoring," paragraph (a) as amended;

(5) OAR 340-20-245 "Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)," subsection (7) "Sources Impacting Class I areas" as amended.

(B) Letter of October 22, 1985 from the Oregon State Department of Environmental Quality to EPA Region 10. Revisions to the Oregon Administrative Rules, Chapter 340, Division 20, adopted by the Environmental Quality Commission on September 27, 1985, as follows:

(1) OAR 340-20-245 "Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration)," subsection (3) "Exemption for Sources Not Significantly Impacting Designated Nonattainment Areas," paragraph (a) as amended.

(C) Letter of March 19, 1986 from the Oregon State Department of Environmental Quality to EPA Region 10. Revisions to the Oregon Administrative Rules, Chapter 340, Division 20, adopted by the Environmental Quality Commission on November 22, 1985, as follows:

(1) OAR 340-20-276 "Visibility Impact" as amended.

3. Section 52.1988(a) is revised to read as follows:

#### § 52.1988 Air Contaminant Discharge Permits.

(a) Emission limitations and other provisions contained in Air Contaminant Discharge Permits issued by the State in accordance with the provisions of the federally-approved Air Contaminant Discharge Permit Rules (OAR 340-20-140 through 185), New Source Review Rules (OAR 340-20-220 through 276), Stack Heights and Dispersion Techniques Rules (OAR 340-20-340 and 345), and Plant Site Emission Limit Rules (OAR 340-20-300 through 320), except Alternative Emission Limits (Bubble) for sulfur dioxide or total suspended particulates which involve trades were the sum of the increases in emissions exceeds 100 tons per year, shall be the applicable requirements of the federally-approved Oregon SIP (in lieu of any other provisions) for the purposes of Section 113 of the Clean Air Act and shall be enforceable by EPA and by any person in the same manner as other requirements of the SIP.

[FR Doc. 86-7942 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 60

[AD-FRL-3000-1]

#### Standards of Performance for New Stationary Sources Hot Mix Asphalt Facilities (Asphalt Concrete Plants); Review and Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: On January 24, 1986, EPA published a notice of review and amendments of standards of performance for hot mix asphalt facilities (asphalt concrete plants). This document was intended to be a final rule. This notice corrects an administrative error.

FOR FURTHER INFORMATION CONTACT: Mr. Gilbert H. Wood at (919) 541-5578, Standards Development Branch, concerning regulatory aspects and the standards, or Mr. Kenneth R. Durkee at (919) 541-5595, Industrial Studies Branch, concerning technical aspects of the industry and control technologies. The address for both persons is Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following corrections are made in FR Document 86-1553, appearing in the



Federal Register issue of January 24, 1986, page 3298:

1. The "Action" line should read "Action: Final Rule."
2. The "Date" line should read "Effective Date: January 24, 1986".
3. The "Comments" section under "Addresses" should be deleted.

Dated: April 3, 1986.

J. Craig Potter,  
Assistant Administrator for Air and  
Radiation.

The amendments that appeared on January 24, 1986 at page 3300 are reprinted below:

#### List of Subjects in 40 CFR Part 60

Air pollution control.  
Intergovernmental relations, Reporting  
and recordkeeping requirements.  
Incorporation by reference, and Hot mix  
asphalt facilities (SIC 2951).

1. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 101, 111, 114, 116, 301,  
Clean Air Act as amended (42 U.S.C. 7401,  
7411, 7414, 7416, and 7601).

2. 40 CFR Part 60, Subpart I title is amended as follows:

#### Subpart I—Standards of Performance for Hot Mix Asphalt Facilities

3. Section 60.90 paragraph (a) is revised to read as follows:

##### § 60.90 Applicability and designation of affected facility.

(a) The affected facility to which the provisions of this subpart apply is each hot mix asphalt facility. For the purpose of this subpart, a hot mix asphalt facility is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler, systems for mixing hot mix asphalt; and the loading, transfer, and storage systems associated with emission control systems.

4. Section 60.91 is revised to read as follows:

##### § 60.91 Definitions

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

(a) "Hot mix asphalt facility" means any facility, as described in § 60.90, used to manufacture hot mix asphalt by heating and drying aggregate and mixing with asphalt cements.

[FR Doc. 86-7938 Filed 4-9-86; 8:45 am]

BULFING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

#### 42 CFR Part 435

[BERC-297-FC]

### Medicaid Program; Treatment of Social Security Cost-of-Living Increases for Individuals Who Lose SSI Eligibility

AGENCY: Health Care Financing  
Administration (HCFA), HHS.

ACTION: Final rule with comment period.

**SUMMARY:** This final rule responds to comments and revises current Medicaid rules for determining financial eligibility for an individual who is no longer eligible for benefits under title XVI of the Social Security Act, the Supplemental Security Income (SSI) Program, due to receipt of cost-of-living increases (COLAs) under section 215(i) of the Social Security Act. This change potentially affects Medicaid categorically needy eligibility in all States by requiring that any individual who would still be entitled to benefits under the SSI program but for receipt of a section 215(i) COLA after April 1977 must be treated as if he or she were still receiving those SSI benefits. This rule does not apply in Puerto Rico, Guam, the Virgin Islands, and American Samoa, where the SSI program is not in effect.

**EFFECTIVE DATE:** These regulations are effective May 12, 1986. However, we will consider any comments on the revisions of the regulation, including the new section 435.136 and the requirement to disregard COLAs received by financially responsible family members, received by May 12, 1986 and revise the regulations as necessary. To assure consideration, comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5:00 p.m.

**ADDRESSES:** Mail comments to the following address:

Health Care Financing Administration,  
Department of Health and Human  
Services, Attention: BERC-297-FC,  
P.O. Box 26676, Baltimore, Maryland  
21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey  
Building, 200 Independence Ave. SW.,  
Washington, DC, or

Room 132, East High Rise Building, 6325  
Security Boulevard, Baltimore,  
Maryland.

In commenting, please refer to file  
code BERC-297-FC. Comments will be

available for public inspection as they are received, beginning approximately three weeks after publication of this document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

**FOR FURTHER INFORMATION CONTACT:**  
Roy Trudel, (301) 594-9128.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On April 12, 1985, we published in the *Federal Register* (50 FR 14397) a proposed rule that revised regulations to conform with a decision of the United States District Court for the Northern District of California in *Lynch v. Rank*, 604 F. Supp. 30 (N.D. Cal. 1984), *aff'd*, 747 F.2d 528 (9th Cir. 1984). That decision involved interpretation of section 503 of Pub. L. 94-566, 42 U.S.C. 1396a (note), commonly known as the Pickle amendment, and ordered the Secretary to rescind the existing Medicaid regulations at 42 CFR 435.135 under which individuals who were no longer eligible for supplemental security income (SSI) benefits qualified for Medicaid only when a section 215(i) cost-of-living increase (COLA) was the specific cause of the loss of SSI benefits. We have already implemented the court order through a State Medicaid action transmittal, HCFA-Pub. 17, released to the States July 27, 1984.

The court also ordered us to prepare new regulations consistent with the findings of the Court of Appeals for the First Circuit in *Ciampa v. Secretary of Health and Human Services*, 687 F.2d 518 (1st Cir. 1982). Accordingly, in the April 12, 1985 proposed rule, we stated that we would provide that an individual who is not eligible for SSI but would be if section 215(i) COLAs received after April 1977 after the individual's last month of eligibility for and receipt of SSI during which he (or she) was also entitled to OASDI were ignored in counting the individual's income must be treated as an SSI recipient for purposes of determining categorically needy eligibility under Medicaid.

In the preamble to that proposed rule, we noted several interrelationships between eligibility for certain State cash assistance and Medicaid eligibility. Under section 1902(a)(10)(A) of the Social Security Act (the Act), 42 U.S.C. 1396a(a)(10)(A), in most States an individual who receives SSI under title XVI of the Act is eligible for Medicaid as a categorically needy individual.



Under section 212(a) of Pub. L. 93-66, 42 U.S.C. 1382 (note), a State must provide an eligible aged, blind, or disabled individual with a State supplementary payment (SSP) if that individual received State assistance for the aged, blind or disabled in December 1973 and his or her income for that month exceeded the amount later received under SSI, plus other income. Under Medicaid regulations at 42 CFR 435.130, a State must provide categorically needy coverage to an individual receiving such a mandatory SSP.

Under section 1616(a) of the Act, 42 U.S.C. 1382c(a), a State may choose to provide an optional SSP based on need to an individual who is eligible for SSI or would be eligible for SSI except for his or her income. Under section 1902(a)(10)(A)(ii)(IV) of the Act, 42 U.S.C. 1396a(a)(10)(A)(ii)(IV), and Medicaid regulations at 42 CFR 435.230, an individual who receives an optional SSP and who would be eligible for SSI except for his or her income, may be covered by a State as an optional categorically needy individual.

The April 12, 1985 publication proposed to revise 42 CFR 435.135 to specify that in determining categorically needy eligibility for Medicaid, States must treat an individual as if he or she were receiving SSI if he or she—(a) Is receiving OASDI benefits; (b) Was receiving SSI but became ineligible for those payments after April 1977; and (c) Would still be eligible for SSI if OASDI COLAs received since April 1977 after the last month the individual was both eligible for and received SSI and entitled to OASDI were not counted as income. We clarified that these provisions would also apply to individuals who were eligible for Medicaid as categorically needy individuals due to receipt of SSP but are no longer receiving either SSP or Medicaid because of increased income due to certain OASDI COLAs. These provisions would not guarantee categorically needy Medicaid eligibility for individuals residing in the 14 States that use more restrictive eligibility criteria than are applied nationally under the SSI program (referred to as section 1902(f) States). However, they would require that section 1902(f) States treat individuals who are no longer eligible for SSI benefits the same as they treat SSI recipients when determining Medicaid eligibility. Because the section 1902(f) option permits these States to restrict Medicaid eligibility of the aged, blind, and disabled to those individuals they are otherwise required to cover who they would have been required to cover under their respective State plans in effect on January 1, 1972, the Pickle

amendment status simply gives individuals the right to receive Medicaid as categorically needy if they satisfy all other requirements imposed under the plan. It does not require these States to disregard title II COLAs for purposes of determining their Medicaid eligibility (even though the COLAs will be disregarded in determining eligibility for Pickle amendment status).

## II. Summary and Discussion of Public Comments

We received five timely letters of comment in response to the proposed rule. The comments were from State agencies and a charitable organization. A summary of specific comments received and our response follows:

1. *Comment:* One commenter suggested that a statement be made in the final regulations as to whether we intended to further appeal the *Lynch* and *Ciampa* cases.

*Response:* We appealed the *Ciampa* decision to the United States Court of Appeals for the First Circuit, and the *Lynch* decision to the United States Court of Appeals for the Ninth Circuit. Both appellate courts upheld plaintiffs' position that section 503 of Pub. L. 94-566, 42 U.S.C. 1396a (note), commonly known as the Pickle amendment, required the use of a "but for" test rather than the "solely" test prescribed in our previous regulation. Neither decision was appealed to the United States Supreme Court. We are currently appealing to the United States Court of Appeals for the Ninth Circuit an order in the *Lynch* case which requires us to compel States to disregard COLAs received by any financially responsible relative in making the determination that an individual is Pickle amendment eligible.

2. *Comment:* One commenter questioned whether the cost projection in the proposed rule is still valid.

*Response:* Based on the information available at present regarding the effect of implementation of the *Lynch* decision, the original cost projections continue to be accurate. Of course, actual first year costs will be affected by the actual implementation date. Costs are further discussed in Item VI, Regulatory Impact Statement.

3. *Comment:* One State noted that the requirement that a recipient be "eligible for and receiving SSI" is not met in some instances but is met in similar instances. The State asked for additional guidance. Specifically, the State contends that when retroactive OASDI benefits exceed the SSI payment limits, the Social Security Administration (SSA) either (1) declares the SSI payment an overpayment, or (2) issues an OASDI

payment which represents the difference between the SSI payments already received and the OASDI payments the individual was entitled to in that period. In the first instance, the individual is apparently declared to be ineligible for SSI, thereby making him not eligible for protection under the Pickle amendment (unless he or she had been receiving SSI and OASDI concurrently at a previous time), while in the second instance the individual is not declared to have been ineligible for SSI (so he or she ultimately may become eligible for protection under the Pickle amendment). The commenter states that since SSA is responsible for determining SSI eligibility, a State finding of ineligibility for SSI in the second instance would not be valid, although continued eligibility for this individual would be contrary to the intent of the Pickle amendment.

*Response:* The process to which the commenter refers is "windfall offset", which is required by section 1127 of the Social Security Act. The purpose of the offset is to ensure that an individual who is eligible for either SSI benefits or OASDI benefits and subsequently becomes retroactively eligible for the other benefit does not receive more benefits than he or she would have received if payments for both benefits had been paid when regularly due. The way in which the offset is done depends on which benefit the individual first received. If, as in instance (1) of the comment, the individual first received monthly OASDI benefits which exceed the SSI monthly rate and subsequently was eligible for SSI benefits, the SSI benefits are reduced by the amount of SSI that would not have been paid if the OASDI benefits had been paid when due. Since the OASDI monthly benefit exceeds the SSI benefit rate, no SSI payment is issued and the individual is declared never to have been eligible for SSI benefits. If, as in instance (2) of the comment, the individual was first receiving SSI benefits and subsequently was retroactively entitled to OASDI benefits which exceeded the SSI benefit rate, the initial OASDI payment is adjusted to reflect the difference between the retroactive OASDI benefit and the SSI benefits paid up to that point. At the same time, the individual loses future eligibility for SSI, but the previous eligibility for SSI benefits stands.

Applying the results of the offset process to Pickle amendment eligibility determinations, an individual in the first instance would not be eligible for Pickle amendment protection because he was never eligible for SSI benefits, and so does not meet an essential requirement



for Pickle amendment eligibility. In the second instance, an individual could be eligible for Pickle amendment protection because his previous eligibility for SSI benefits stands. With regard to the commenter's contention that individuals in similar situations are treated dissimilarly, we do not believe this is true. As explained above, the situations are in fact not similar, but are dependent on whether an individual was first receiving SSI benefits or OASDI benefits. In one instance, the requirements for eligibility under the Pickle amendment cannot be met; in the other instance, they can. Thus, the individual's specific situation determines his potential eligibility for Pickle amendment protection.

The Pickle amendment, itself, treats similarly situated individuals differently. This anomaly was noted by the United States Court of Appeals for the First Circuit in *Ciampa* at 525-526, where the court recognized that over time the income of individuals who qualify for protection under the Pickle amendment could far exceed the SSI eligibility level. Accordingly, the fact that some individuals are treated better than others based upon relatively minor distinctions is simply another aspect of a Congressional enactment designed to assist a narrowly defined group of individuals.

4. *Comment:* One commenter suggested that in the interest of clarity, 42 CFR 435.135(a)(2), which contains a condition for eligibility, be changed to read: "were eligible for and in receipt of SSI but became ineligible for those payments after April 1977" (emphasis supplied). The commenter believes that adding the words "eligible for" clarifies the intent of the Pickle amendment and also prevents confusion in situations where an individual is given SSI benefits followed by retroactive OASDI benefits which result in the SSI benefits being discontinued retroactively. The commenter contended that such an individual would have received SSI benefits, but would not have actually been eligible for them. Accordingly, the commenter concluded, that without the addition of the "eligible for" in this section of the regulations, the individual could still receive Pickle amendment protection.

*Response:* We do not believe that this change will have the effect envisioned by the commenter. For a discussion of the Pickle amendment implications of the windfall offset provision, we would refer to our response to comment number 3 above since essentially the same issue is raised by that comment.

5. *Comment:* One commenter suggested that for clarity and accuracy

the regulation should provide that COLAs be deducted from current OASDI benefits rather than from income.

*Response:* As far as we can ascertain, there is no practical difference in result between the language in the NPRM and the language proposed by the commenter. However, if a difference in result should arise, the commenter's language would be more faithful to the statute. Therefore, we accept this comment and will make the change suggested.

6. *Comment:* One commenter suggested that guidelines are needed on how to calculate the amount of title II COLAs to be deducted from the individual's income in determining eligibility under the Pickle amendment.

*Response:* We agree and in May 1985 we issued guidelines to the States in Medicaid Program Memorandum No. 85-4. (This program memorandum has since been superseded by Program Memorandum No. 85-20 issued in December 1985). Parties interested in the guidelines may request a copy of Medicaid Program Memorandum No. 85-20, which replaces No. 85-4, by writing to us at the address furnished for comments or by calling our information contact.

7. *Comment:* One commenter raised a question as to whether an individual applying for eligibility under the Pickle amendment must, in addition to other eligibility requirements already set forth in the regulations, have been eligible for Medicaid at the time he or she originally established eligibility for SSI benefits. The commenter maintains that individuals were required to be eligible for Medicaid at the time of loss of SSI under the current regulations, and suggests that if this continues to be a requirement for eligibility under the Pickle amendment, a criterion to that effect be added to 42 CFR 435.135(a).

*Response:* The commenter's suggestion would be contrary to a plain reading of the Pickle amendment, which does not require that individuals already be eligible for Medicaid at the time they lost SSI in order to receive Pickle amendment protection. Therefore we cannot accept this comment.

8. *Comment:* One commenter believed that clarification is needed concerning the procedure for determining categorically needy Medicaid eligibility on an ongoing basis for those individuals who lose their SSI eligibility during the year. The commenter suggested that this clarification be included in the preamble. The commenter was concerned that the instructions in Medicaid Action Transmittal No. 84-10 concerning the

effective date of eligibility as well as retroactive eligibility and coverage for individuals under the Pickle amendment were insufficient, and that these issues need to be clarified.

*Response:* We have issued clarifying instructions on both of these issues to the States in Medicaid Action Transmittal No. 84-16 and Medicaid Program Memorandum No. 85-10. Medicaid Action Transmittal No. 84-16 imposes a requirement that States notify certain individuals who are potentially eligible under the Pickle amendment. Medicaid Program Memorandum No. 85-10 requires States which do not cover the medically needy to send notices to their potentially Pickle amendment eligible residents who lost SSI and Medicaid since August 1, 1984 and who have not already applied for Medicaid under the Pickle amendment, advising them they may wish to reapply for Medicaid. These instructions were issued to effectuate the court order in *Lynch v. Rank*.

To prevent any misunderstanding of States' obligations in implementing the *Lynch* decision requirements, we are adding a new § 435.136. The new section provides that a State agency must provide a one-time notice of potential Medicaid eligibility to individuals described in section 435.135 (a) and (c) who were not receiving Medicaid as of March 9, 1984 and establishes an annual review system to identify individuals who meet the requirements of § 435.135 (a) and (c) who lose categorically needy eligibility for Medicaid because of a loss of SSI. The State must send notices of potential eligibility for Medicaid to these individuals for three consecutive years following their identification through the annual review system.

We are including this new section because one State challenged the validity of our implementing the court's order in the *Lynch* case through the use of Action Transmittals and Program Memoranda rather than as a regulation. Although we believe the transmittals were sufficient to implement the order which was imposed upon us by the District Court and were validly issued instructions under § 503 of Pub. L. No. 94-566 (the Pickle amendment), we are nevertheless including a provision in the regulation as a means of assuring immediate compliance by the States in order to fulfill our obligations under the court order in the *Lynch* case. In view of the court's order in the *Lynch* case which invalidated our previous regulation implementing the Pickle amendment and required us to compel the States to provide the notices and establish the review system described in



the HCFA transmittals, we were not required to publish these requirements as a regulation. However, because of the inherent complexity in administering the "but for" test component of that amendment, we believe that the publication of a separate section in the regulation pertaining to the notification requirement will eliminate any doubt of the States' obligation to perform the annual review and notifications which the court found to be necessary for implementing the Pickle amendment. This publication is intended to satisfy our obligation under the court order to secure the States compliance with the terms of that order. We also note that the Secretary is requiring the notification and annual review procedures described in section 435.136 (which are also described in the previously mentioned action transmittals and program memoranda) solely because of the District Court's order in the *Lynch v. Rank* case, rather than as an independent exercise of his discretion that these procedures are required or desirable under the Medicaid statute and the Pickle amendment.

We are issuing this regulation despite the fact that the United States Supreme Court's recent decision in *Green v. Mansour*, —U.S.—, 106 S. Ct. 423, (1985) may have called into question the authority of the Federal government to order States to employ a notice remedy as a means of rectifying previous violations of Federal law as long as the States are not violating the law at the time a Federal court enters a judgement against them. However, *Green* did not reach the issue of whether a Federal court could secure the same result from States, indirectly, by compelling a Federal agency to require the States to furnish a notice remedy in similar circumstances. Therefore, we do not believe the *Green* decision precludes us from issuing this regulation.

9. *Comment:* One commenter questioned whether an individual eligible because of the Pickle amendment will be treated in all respects as an SSI recipient for income and resource deeming purposes. Treatment of the individual as an SSI recipient would in many cases result in none of his/her income or resources being considered to be available to other family members in determining their eligibility for Medicaid. This, in turn, would likely result in those family members being found eligible for Medicaid. On the other hand, if the individual is treated like an SSI recipient only insofar as he is given Medicaid as a categorically needy

individual, his income and resources would in many cases be considered available to other family members, which in turn, might result in their not being eligible for Medicaid.

*Response:* The Pickle amendment and the court decisions interpreting it simply provide that an individual eligible because of the Pickle amendment is to be treated like an SSI recipient only for purposes of whether he or she is to receive Medicaid as categorically needy. The amendment only states that medical assistance is to be provided to a recipient as if he or she were receiving SSI. The amendment does not make the individual an SSI recipient for any other purpose. Thus, his or her income and resources would be deemed available to other family members using those rules applicable to non-SSI recipients, since the Pickle amendment eligible individual is indeed not an SSI recipient. (Op. Cit., 747 F. 2d 534-536).

### III. Provisions of the Final Regulations

In consideration of the comments received, and upon further analysis of specific issues, we are adopting as final regulations the proposed rule as published on April 12, 1985 with the following changes discussed below.

We are adding the words "eligible for" to proposed § 435.135(a)(2) in order to clarify the intent of the Pickle amendment.

We are changing the phrase "deducted from income" in proposed § 435.135(a)(3) to read "deducted from current OASDI benefits". This change makes the regulation more faithful to the statute.

In addition to the changes noted above, we are making three changes not prompted by public comments. The first change adds the words "or other family member (e.g., a parent)" to the end of proposed § 435.135(b). This change is necessitated by an August 20, 1985 ruling and the November 12, 1985 order of the U.S. District Court, Northern District of California, in the *Lynch* case as a result of our interpretation of the Pickle amendment with regard to whether the COLAs of spouses who do not meet the requirements for eligibility under the Pickle amendment should be disregarded from the applicant's income in determining his or her Pickle amendment eligibility. We had held that only qualifying COLAs of the applicant and his or her qualifying spouses should be disregarded in this determination. The court disagreed, however, and ruled that COLAs of an ineligible spouse or any financially responsible family members should be disregarded. We have appealed this order to the United States Court of Appeals for the Ninth

Circuit. If we prevail in this appeal, or if we receive a stay of the District Court's order, this section of the regulations will be ineffective, and we will publish a notice to that effect in the *Federal Register*. In that event, we would immediately revise § 435.135(b) to read as follows:

(b) Cost-of-living increases to be included under (a)(3) also include those OASDI increases paid under section 215(i) of the Act which were received by the individual's spouse, since the last month after April 1977 for which the spouse was both eligible for and received SSI or a State Supplementary payment and was also entitled to OASDI benefits.

This language, in our view, is consistent with the language of the Pickle amendment, which specifically delineates the only circumstances under which the COLAs of a spouse are to be taken into account in making the Pickle amendment determination. Since we are currently under a court order which precludes us from adopting this interpretation, we cannot include it in this regulation unless we prevail on appeal.

The second change adds the words, "up to the amount that made him or her ineligible for SSI" to the last sentence of proposed § 435.135(c). This restores language, which is part of the current regulations, inadvertently omitted from the proposed rule. This language is necessary in order to ensure that individuals who qualify for protection under the Pickle amendment in section 1902(f) States are not provided with any benefit other than that conferred by the Pickle amendment by virtue of their Pickle amendment status.

The third change adds a new § 435.136 to Subpart B of Part 435 to address the implementation of the U.S. District Court decision in the case of *Lynch v. Rank*. The regulation reinforces the requirement that a State implement the *Lynch v. Rank* court order: namely, each State except for those States which by virtue of section 1905(f) do not elect to confer the substantive benefits of the Pickle amendment on their qualifying former SSI/SSP recipients must perform an annual review of cases to determine potential new eligibles under the court's revised interpretation of the Pickle amendment.

### IV. Waiver of Proposed Rulemaking

In this final rule, we are adding a new § 435.136 to place in regulations the requirement that States review cases and provide adequate notice to individuals who might qualify for Medicaid as a result of the *Lynch v.*



Rank court order. These requirements are necessary to ensure Medicaid availability to members of the class included in the court's order. These requirements previously were communicated to the States through Medicaid Action Transmittals and Program Memoranda. We are adding them to the regulations so that regulations will more completely address the effect of certain COLAs on Medicaid eligibility.

Since the provisions included at § 435.136 do not reflect new policy and are necessary to comply with the court's order in the *Lynch* case, in light of this good cause, we believe that it is unnecessary, impracticable, and contrary to the public interest to publish these provisions under notice and comment procedures. However, to allow interested parties opportunity to comment on the new section, we will accept timely comments submitted to the addresses listed in the "ADDRESS" section of this document. If comments warrant a revision to these rules, we will publish the change and responses to all comments in the *Federal Register*.

Moreover, in the *Lynch* case, the Secretary has at various times been the subject of motions to hold him in contempt of court for failure to secure compliance by all the States with the court's order in *Lynch*. Publication of this regulation is one means of defending against future contempt action in the court because we believe it will help to secure compliance with the court's order. Avoidance of a possible contempt of court citation also constitutes good cause to dispense with notice and comment procedures. Since we are providing for subsequent comment, and prejudice which may arise from dispensing with advance notice and comment could be eliminated by subsequent action in response to comments received.

#### V. Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, we will consider all comments received timely, and respond to them in the *Federal Register*. We specifically invite comments on the change in 42 CFR 435.135 to deduct the COLAs of all financially responsible family members in calculating Pickle amendment eligibility and on the inclusion of § 435.136 in the regulations.

#### VI. Reporting and Recordkeeping Requirements

Section 435.136 of this final rule contains information collection requirements that are subject to the

Office of Management and Budget review under the Paperwork Reduction Act of 1980. A notice will be published in the *Federal Register* when approval is obtained. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official whose name appears in the preamble and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building (room 3208), Washington, DC 20503, ATTN: Desk Officer for HCFA.

#### VII. Regulatory Impact Statement

##### A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of \$100 million or more, cause of major increase in costs or prices, or meet other threshold criteria that are specified in the Executive Order.

As noted previously, we are required to publish rules for determining categorically needy eligibility under Medicaid for individuals not currently eligible for SSI who would be eligible for SSI but for the receipt of OASDI COLAs under section 215(i) of the Act after April 1977. These individuals were dually entitled to OASDI and SSI, but lost their SSI benefits sometime after April 1977. If section 215(i) COLAs received after the last month of receipt of SSI after April 1977 were not counted as income, these individuals would be eligible for SSI and thus possibly eligible for categorically needy Medicaid benefits. (Other individuals who lost categorically needy eligibility solely because of receipt of section 215(i) COLAs are not affected by this rule because their eligibility has been protected under current regulations.)

This regulation simply conforms the *Code of Federal Regulations* to the requirements of the Pickle amendment as it has been construed by the courts. Even absent this regulation, the States are required to implement the law in this manner. Thus, the impact of this change is the result of implementation of the statute, not the result of conforming the regulations to the statute. Nonetheless, we have considered the impact of implementing this change, as discussed below.

This change restores categorically needy Medicaid eligibility to a number of individuals. Current estimates suggest that 500,000 or more individuals nationwide may have to be contacted to identify those who would still be eligible but for receipt of section 215(i) COLAs.

We expect that many of those identified during the screening will be found to be unaffected by this change, even if its requirements had been applied at the time they lost their eligibility. In addition, some of those who have retained categorically needy eligibility will not be affected at this time due to institutionalization, death, or other changes of circumstances.

Based on the data currently available to us, we estimate that categorically needy eligibility will be restored to about 20,000 aged, blind, or disabled individuals who have lost categorically needy eligibility since April 1977 and who have not become otherwise eligible for Medicaid benefits. In addition, this change will result in about 3,000 to 4,000 individuals per year retaining categorically needy eligibility that they would lose under the current regulations. Medicaid recipients for FY 1986 are projected to be 22.7 million, 6.5 million of whom are aged, blind or disabled. Thus, we estimate that, during the first year, total Medicaid enrollment will increase by less than 0.1 percent and aged, blind, and disabled Medicaid enrollment will increase by a little more than 0.3 percent.

Each additional individual who becomes categorically eligible for Medicaid will increase Federal Medicaid expenditures by an amount less than the estimated average annual Medicaid cost for all recipients, since the characteristics of the affected individuals are such that we know that they are most likely not institutionalized, and that nearly all have Medicare, which acts as primary payor for dually eligible individuals. In addition, many of the individuals who may have been denied categorically needy eligibility receive Medicaid benefits under the medically needy eligibility option that is available to the aged, blind and disabled in 28 States, the District of Columbia and the Northern Mariana Islands, and the change of their status under this final rule with comment period will have a negligible effect on program costs. We estimate that Federal Medicaid expenditures will increase by about \$5 million the first year. Even assuming that all potential members of the group affected will become eligible, we project that it will be highly unlikely that our estimate of Medicaid costs, as shown below, will triple. We project that Federal Medicaid expenditures will increase as follows over the next several years based on a April 1, 1986 effective date. State expenditures will increase correspondingly.



Fiscal year	Federal expenditure increase <sup>1</sup>
1986	5
1987	15
1988	15
1989	20
1990	20

<sup>1</sup> These estimates are rounded to the nearest \$5 million.

These increased expenditures will have some economic impact in that they will, to some extent, result in increased Medicaid revenues received by providers and reduce out-of-pocket medical costs for the affected individuals. However, we have determined that these effects will not meet any of the Executive Order criteria for identifying major rules. Therefore, a regulatory impact analysis is not required.

#### B. Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. As defined by the Regulatory Flexibility Act, a "small entity" includes the term "small governmental jurisdiction", which means "governments of cities, counties, towns, townships, villages, school districts or special districts, with a population of less than fifty thousand." States are not included in this definition. In addition, since they are individuals, Medicaid recipients are not considered small entities under the Regulatory Flexibility Act.

As discussed in relations to E.O. 12291, above, this final rule with comment period merely conforms our codified regulations to the statute. Any impact will be the result of the statute, not this rule. Therefore, we have determined, and the Secretary certifies, that this rule will not result in a significant impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not provided.

#### List of Subjects in 42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Supplemental Security Income (SSI).

#### PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

42 CFR Part 435 is amended as set forth below:

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The table of contents for Subpart B is amended by adding a new §435.136 to read as follows:

#### Subpart B—Mandatory Coverage of the Categorically Needy

Sec.

435.136 State agency implementation requirements for one-time notice and annual review system.

3. Section 435.135 is revised to read as follows:

#### § 435.135 Individuals who become ineligible for cash assistance as a result of OASDI cost-of-living increases received after April 1977.

(a) If an agency provides Medicaid to aged, blind, or disabled individuals receiving SSI or State supplements, it must provide Medicaid to individuals who—

- (1) Are receiving OASDI;
- (2) Were eligible for and receiving SSI or State supplements but became ineligible for those payments after April 1977; and

(3) Would still be eligible for SSI or State supplements if the amount of OASDI cost-of-living increases paid under section 215(i) of the Act, after the last month after April 1977 for which those individuals were both eligible for and received SSI or a State supplement and were entitled to OASDI, were deducted from current OASDI benefits.

(b) Cost-of-living increases include the increases received by the individual or his or her financially responsible spouse or other family member (e.g., a parent).

(c) If the agency adopts more restrictive eligibility requirements than those under SSI, it must provide Medicaid to individuals specified in paragraph (a) of this section on the same basis as Medicaid is provided to individuals continuing to receive SSI or State supplements. If the individual incurs enough medical expenses to reduce his or her income to the financial eligibility standard for the categorically needy, the agency must cover that individual as categorically needy. In determining the amount of his or her income, the agency may deduct the cost-of-living increases paid under section 215(i) after the last month after April 1977 for which that individual was both eligible for and received SSI or a State supplement and was entitled to OASDI, up to the amount that made him or her ineligible for SSI.

4. A new § 435.136 is added to read as follows:

#### § 435.136 State agency implementation requirements for one-time notice and annual review system.

An agency must—

(a) Provide a one-time notice of potential Medicaid eligibility under § 435.135 to all individuals who meet the requirements of § 435.135 (a) or (c) who were not receiving Medicaid as of March 9, 1984; and

(b) Establish an annual review system to identify individuals who meet the requirements of § 435.135 (a) or (c) and who lose categorically needy eligibility for Medicaid because of a loss of SSI. States without medically needy programs must send notices of potential eligibility for Medicaid to these individuals for 3 consecutive years following their identification through the annual review system.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: February 10, 1986.

Henry R. Desmarais,  
Acting Administrator, Health, Care Financing Administration.

Approved: March 14, 1986.

Otis R. Bowen, M.D.,  
Secretary.

[FR Doc. 86-7994 Filed 4-9-86; 8:45 am]

BILLING CODE 4120-01-M

#### DEPARTMENT OF DEFENSE

#### 48 CFR Part 242

#### Department of Defense Federal Acquisition Regulation Supplement Contracting Officer Determination Procedures

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council has approved a change to the DoD FAR Supplement which provides clarifying instructions to contracting officers with respect to determination procedures in the resolution of questioned costs.

EFFECTIVE DATE: April 7, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(A&L), Room 3C841, The Pentagon, Washington, DC 20301-3062, (202)697-7266.



**SUPPLEMENTARY INFORMATION:****A. Background**

Paragraphs 2324(f) (2), (3) and (4) of section 911 of the FY 1986 DoD Authorization Act (Pub. L. 99-145) established procedures to be followed by DoD contracting officers in determining allowability of cost rates. The Defense Acquisition Regulatory Council published a proposed rule on February 26, 1986 (51 FR 6772 of February 26, 1986). No public comments were received. Therefore, no changes to the proposed rule were made.

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1985 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84-1 through 84-10.

Interested parties may submit proposed revisions to this Supplement directly to the DAR Council.

**B. Regulatory Flexibility Act**

As the coverage was not required to be published for public comment

pursuant to Pub. L. 98-577, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply.

**C. Paperwork Reduction Act Information**

The rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

**List of Subjects in 48 CFR Part 242**

Government procurement.

Owen Green,

*Acting Executive Secretary, Defense Acquisition Regulatory Council.*

Therefore, 48 CFR Part 242 is amended as follows:

**PART 242—CONTRACT ADMINISTRATION**

1. The authority citation for 48 CFR Part 242 continues to read as follows:

**Authority:** U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

2. Section 242.705-1 as amended by adding paragraph (b)(5)(i) to read as follows:

**242.705-1 Contracting Officer determination procedure.**

(b)(5)(i) The Contracting Officer shall: (A) not resolve any questioned costs until he had obtained—

(1) adequate documentation with respect to such costs; and

(2) the opinion of the defense contracts auditor on the allowability of such costs;

(B) ensure that the defense contract auditor, to the maximum extent practicable, is present at any negotiation or meeting with the contractor regarding a determination of final indirect cost rates of the contractor;

(C) ensure that all categories of costs designated in the report of the defense contract auditor as questioned with respect to a proposal for settlement be resolved in such a manner that the amount of the individual questioned costs that are considered allowable will be reflected in the negotiation memorandum; and

(D) notify the contractor which individual costs were considered unallowable and the respective amounts of the disallowance.

[FR Doc. 86-8130 Filed 4-9-86; 8:45 am]

BILLING CODE 3810-01-M



# Proposed Rules

Federal Register

Vol. 51, No. 69

Thursday, April 10, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### 1 CFR Ch. III

#### Recommendations; Nonlawyer Representation

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Request for comments.

**SUMMARY:** The Administrative Conference Committee on Regulation is considering a tentative recommendation on the subject of "elimination of barriers to representation by nonlawyers". This topic relates to representation by persons other than lawyers of other persons who have business with "mass justice agencies" (as that term is defined in the recommendation). Views and supporting factual material are requested to be submitted to aid the Committee in its consideration.

**DATES:** *Comment Deadline:* May 7, 1986. One copy is sufficient. Comments received after the deadline will be considered to the extent feasible.

**ADDRESSES:** *Send comments to:* William C. Bush, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** William C. Bush, Administrative Conference of the United States, 2120 L Street NW, Suite 500, Washington, DC 20037; telephone (202) 254-7065.

**SUPPLEMENTARY INFORMATION:** The Administrative Conference Committee on Regulation is working toward development of a recommendation concerning representation by nonlawyers of persons having business with mass justice (e.g., Social Security) agencies. The Committee is particularly interested in information relating to any interactions the recommended procedures may have with state laws. The Committee's tentative recommendation is based largely on a report by our consultant Zona Hostetler. Copies of Ms. Hostetler's report,

*Nonlawyer Assistance to Individuals in Federal Mass Justice Agencies: The Need for Improved Guidelines*, are available on request.

#### Proposal on Which Comments are Requested

##### *Tentative recommendation*

April 2, 1986.

#### Elimination of Barriers to Representation by Nonlawyers

Many individuals involved in federal "mass justice"<sup>1</sup> agency proceedings are unassisted in filling out forms, filing claims, and appearing in agency proceedings. A substantial number of unassisted persons need and desire assistance, but are unable to afford representation by lawyers. A lack of representation reduces the probability that an individual will obtain favorable results in dealing with an agency. Further, unassisted individuals are more likely than those who are assisted to cause a loss of agency efficiency by requiring more time, effort, and help from the agency.

Federal government assistance to persons involved in agency proceedings currently includes direct assistance by agency personnel and indirect assistance through funding of legal aid programs and approval or payment of attorney fee awards. While additional government assistance may be needed for those individuals still without assistance, particularly those who are indigent, this recommendation focuses on the potential for increased representation by nonlawyers. Nonlawyer assistance in administrative agency proceedings has proven to be effective and beneficial for the assisted individuals.

Agency practices do not currently maximize the potential for nonlawyer representation, and, in some instances, may hinder the availability of qualified, low-cost representation by nonlawyers.

<sup>1</sup> The term "mass justice" is used here to categorize an agency program in which a large number of individual claims or disputes involving personal, family, or personal business matters come before an agency; e.g., the Old Age Survivors and Disability Insurance program administered by the Social Security Administration. To the extent that principles incorporated in this recommendation may be applicable to other programs in which nonlawyer representation is (or could be made) available, the Conference recommends the consideration of these principles by the agencies involved.

Agencies should take the steps necessary to eliminate inappropriate barriers to nonlawyer representation.

Agencies generally have the authority to authorize any person to act as a representative for another person having business with the agency. Where an agency intends to permit nonlawyers to represent individuals in agency matters, the agency needs to state that intention affirmatively in its regulations for two reasons. First, an affirmative statement is essential, under existing case law, to protect a federal nonlawyer representative from prosecution under state "unauthorized practice of law" statutes for engaging in activity incident to that representation, including advertisement of the availability of services, as well as providing advice and assistance preparatory to commencing agency proceedings. Second, an affirmative agency position is needed to overcome a common assumption of nonlawyers that agencies welcome only lawyers as representatives, and thereby to encourage an increase in the provision of nonlawyer services.

#### Recommendation

1. Federal agencies that have appearing before them a significant number of unrepresented individuals with personal, family, or personal business claims or disputes should review their regulations regarding representation. The review should be directed towards the goals of authorizing increased representation by nonlawyers, and of maximizing the potential for free choice of representative.

2. If an agency determines that some levels of its proceedings are so complex or specialized that only specially qualified persons can adequately provide representation, then the agency should tailor its eligibility requirements so as not to exclude nonlawyers (including nonlawyers who charge fees) as a class, if at least some nonlawyers, by reason of their knowledge, experience, training, or other qualification, can adequately provide the representation.

3. Agencies should declare unambiguously their intention to authorize representation by nonlawyers meeting agency criteria. Where a declaration by an agency may have the effect of preempting state laws (such as



"unauthorized practice of law" statutes), then the agency should employ the procedures set out in Recommendation 84-5 with regard to notification of and cooperation with the states and other affected groups.

4. Agencies should review their rules of practice that deal with attorney misconduct (such as negligence, fee gouging, fraud, misrepresentation, and representation when there is a conflict of interest) to ensure that similar rules are made applicable to nonlawyers as appropriate.

#### List of Subjects in 1 CFR Ch. III

Administrative practice and procedure, Attorneys.

Dated: April 2, 1986.

Richard K. Berg,  
General Counsel.

[FR Doc. 86-8055 Filed 4-9-86; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF ENERGY

### Western Area Power Administration

#### 10 CFR Part 904

#### General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project

**AGENCY:** Western Area Power Administration, Department of Energy.

**ACTION:** Proposed rule; additional information.

**SUMMARY:** In a Federal Register Notice (51 FR 4376) dated February 4, 1986, the Western Area Power Administration (Western) announced that additional information, including a statement of research and analysis, would be provided in a Federal Register Notice in response to questions presented at the public comment forum on February 12, 1986, or in writing by February 17, 1986. This is Western's response to the oral and written questions received on the revised proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project (General Regulations).

**DATES:** Interested parties may submit further written comments on the revised proposed General Regulations within 30 days of publication of this document. Requests for another public comment forum must be received within five (5) days of the date of publication of this Notice.

**ADDRESS:** Written comments and requests for an additional public comment forum must be submitted to Mr. Thomas A. Hine, Area Manager, Western Area Power Administration,

Boulder City Area Office, P.O. Box 200, Boulder City, NV 89005.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Tom Carter, Assistant Area Manager for Power Marketing, Western Area Power Administration, Boulder City Area Office, P.O. Box 200, Boulder City, NV 89005, (702) 293-8855.

Mr. Gary D. Miller, Attorney, Office of the General Counsel, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401, (303) 231-1531.

**SUPPLEMENTARY INFORMATION:** On January 28, 1986, and February 4, 1986, Western published notices that an additional public comment forum would be held on February 12, 1986, to allow further opportunity for all interested parties to comment on the revised proposed General Regulations. In the February 4, 1986, Notice (51 FR 4376), Western invited all interested parties to indicate to Western, either during the public comment forum or by written request received by February 17, 1986, what additional information they wanted on the revised proposed General Regulations. Parties could ask any questions they had or request any analysis or information they required, in order to more fully understand Western's proposal and any rationale behind it. The additional comment forum and opportunity to request more information was granted by Western at the request of several participants who responded to the Notice of Rulemaking and Request for Comments published in a Federal Register Notice (50 FR 49050) dated November 29, 1985.

This Federal Register Notice is a further effort by Western to provide all interested parties ample opportunity to understand, to comment on, and to participate in the development of the General Regulations.

Proposed General Regulations were first published in the Federal Register (50 FR 20732) on May 17, 1985. The Federal Register provided notice that comments on the proposed General Regulations would be accepted by Western on or before July 15, 1985. A public information forum on the proposed General Regulations was held on June 4, 1985, and a public comment forum was held on July 1, 1985. At the public comment forum, Western announced a 90-day delay in the public process on the proposed General Regulations. The 90-day delay was in response to a request made by the Colorado River Commission of Nevada (CRC) on behalf of the Boulder Canyon Project renewal contractors and proposed Upgrading Program allottees. The 90-day delay was granted by

Western to allow those involved to resolve their differences regarding the Boulder Canyon Project matters. Subsequently, on July 26, 1985, Western published in the Federal Register (50 FR 30447) a "Notice of a Delay in the Comment Period on the Proposed General Regulations for Charges for the Sale of Power From the Boulder Canyon Project." The Notice provided that the comment period would be extended until October 1, 1985.

Upon initial review of the comments received on the proposed General Regulations, Western determined that it would be in the best interest of all concerned to publish revised proposed General Regulations and allow for additional comments.

The revised proposed General Regulations and request for comments was published in the Federal Register (50 FR 49050) on November 29, 1985. A public comment forum was held in Las Vegas, Nevada, on December 19, 1985, to receive oral comments. The period for written comments closed January 6, 1986. Following the review of comments on the revised proposed General Regulations, Western held a third comment forum in Las Vegas, Nevada, on February 12, 1986, and requested that the participants indicate what additional information was needed to aid them in formulating final comments on the revised proposed General Regulations. Responses to the oral and written requests for more information are provided in the following "Additional Information" section.

#### Additional Information

During the public comment forum and in written comments received, the participants have requested additional information, including any research and analysis made, on the following sections of the revised proposed General Regulations and some additional areas not included in the proposed General Regulations. Information was requested on the following:

- (1) Section 904.1.
- (2) Section 904.6.
- (3) Section 904.8.
- (4) Section 904.9.
- (5) Section 904.10.
- (6) Section 904.11.
- (7) Section 904.12.
- (8) Section 904.15.
- (9) Section 904.16.
- (10) Conformed Criteria.
- (11) Los Angeles Department of Water and Power Agreement for Power Generation Control at Hoover Power Plant.
- (12) Use of synchronized generation by Upgrading Program contractors.



(13) Boulder Canyon Project contract negotiations parallel with General Regulations.

The information requested is being provided in this Notice. Any research or analysis referenced herein has been provided to all parties who have expressed an interest in this process. Any other party desiring a copy of any of the documents may receive a copy by contacting the Boulder City Area Office. Copies of all the documents are available for review at the Boulder City Area Office.

#### (1) Section 904.1 Authorities

Information was requested on the "reference to 'power marketing authorities' other than the Boulder Canyon Project Act, the Boulder Canyon Project Adjustment Act, and the Hoover Power Plant Act of 1984."

The Boulder Canyon Project contracts of 1930 and 1941 recite that they are made pursuant to the Act of April 17, 1902, and acts amendatory thereto and supplementary thereof. This same authority is cited in the draft contracts provided to Western by the Department of Water and Power, the city of Los Angeles (LADWP) and CRC. In addition to the general policies set out in several of these acts, the specifics of a number of acts expressly affect the marketing of the Boulder Canyon Project power; for example, the Federal Water Power Act of 1920 (16 U.S.C. 791a *et seq.*), the Boulder City Act of 1958 (72 Stat. 1726), the Department of Energy Organization Act of 1977 (42 U.S.C. 7107 *et seq.*), the Colorado River Storage Project Act of 1956 (43 U.S.C. 620 *et seq.*), the Colorado River Basin Project Act of 1968 (43 U.S.C. 1501 *et seq.*), and the Colorado River Basin Salinity Control Act (43 U.S.C. 1571 *et seq.*), as amended.

#### (2) Section 904.6 Revenue Requirements

Subsection (b)(3). Information was requested on "the use of the term 'within' rather than 'over.'"

Both terms appear and are used in the applicable statute. The terminology used is merely a reference to the repayment periods specified in § 904.15 of the revised proposed General Regulations which was recommended by comments received on the proposed General Regulations published in May 1985.

Subsection (c)(4). Information was requested on this subsection, but no specific data was requested.

Earlier comments have been received regarding Western's authority to repay the advances made to the Colorado River Dam Fund deemed to be allocated to flood control and Western's authority to require at 3 percent interest.

Western issued a legal opinion dated June 3, 1985, concurred in by the Bureau of Reclamation's (Reclamation) legal opinion dated April 5, 1985, that such repayment is to be made under terms which have been expressly set forth in the proposed General Regulations.

#### (3) Section 904.8 Base Charge

Subsection (a)(1). Information was requested on "the reference to 'appropriate Department of Energy Regulations.'"

"Appropriate Department of Energy regulations" refers to present or future regulations pertaining to the development of charges for power.

Examples of present "appropriate Department of Energy regulations" are Delegation Order 0204-108 (48 FR 55664) dated December 14, 1983; Secretarial Order RA 6120.2 dated September 20, 1979, as amended; and 10 CFR, Part 903 (50 FR 37835) dated September 18, 1985.

Subsection (a)(2) and (3). Information was requested on these subsections, but no specific data was requested. Earlier comments have been received questioning how Western arrived at the proposed 45 percent capacity and 55 percent energy split of the costs to be paid by the Base Charge.

For several months, Western has been working with the allottees to develop an appropriate rate design for the charges for the power from the Boulder Canyon Project. In June 1985, Western held a public information forum on the General Regulations proposed in the *Federal Register* (50 FR 20732) on May 17, 1985. The General Regulations, at that time, did not address the rate design question; i.e., how much of the required revenue was to be collected from the charge for capacity and how much from the charge for energy? At the public information forum on June 4, 1985, Western stated that a base rate formula would be developed by Western, and that the capacity and energy components of the rate design would be discussed during a separate public process. The allottees indicated that the rate design should be determined in the General Regulations in order to assure certainty and permit bonding for Reclamation's Upgrading Program to go forward. Western indicated that as long as the collection of adequate revenues was assured, Western would seriously consider any rate design which the allottees could agree upon and which did not violate the law. Three alternative methods for the rate design of the Base Charge and Lower Basin Development Fund Contribution Charge were introduced during the forum. The three methods were: (1) A traditional method, where the capacity component included the

fixed costs of a project and the energy component included the annualized costs; (2) the historical (Hoover) method, where the capacity component included all of the costs associated with generating machinery and associated equipment, and the energy component included all of the costs associated with the dam and appurtenant works; and (3) an equitable split method, where all costs would be equitably split between a capacity and an energy component based upon a percentage split rather than attempting to put costs into various categories and formulas. Western clearly stated that the methods presented were not the only methods that would be considered, and that the allottees' recommendations for the rate design were requested for consideration.

Comments received on the proposed General Regulations indicated that the parties involved preferred that the rate design be specific and be included in the General Regulations. At the public comment forum on the proposed General Regulations held on July 1, 1985, in response to a request by CRC on behalf of the allottees for a delay, Western announced a 90-day delay in the comment period on the proposed General Regulations. CRC stated in its request: "In the meantime the allottees propose to seek agreement among themselves on recommendations for the formulation of the revised proposed rule, particularly with respect to the Base Rate formula and the elements of the Contribution Charge."

Immediately following the public information forum on June 5, 1985, Western held an informal, open meeting with all interested parties to discuss a draft power repayment study format document. Western provided to those in attendance the best preliminary cost data available at the time for the post-1987 period. Revised cost data was made available to the allottees prior to the end of the comment period on the proposed General Regulations.

During the delay in the comment period, Western met, upon request, with interested parties to supply additional information and to help resolve differences among the allottees on the proposed General Regulations, particularly the differences regarding the Base Charge and the Lower Basin Development Fund Contribution Charge. Upon termination of the 90-day delay of the comment period, the allottees submitted to Western three separate and differing proposals for the rate design of these charges.

Since the allottees were unable to come to a consensus on the design of the capacity and energy components of the



charges for power from the Boulder Project, Western had to propose a solution.

Western reviewed the comments regarding the proposed cost allocations submitted by the allottees. Western concluded that the costs required to be recovered by the Hoover legislation (see § 904.6 of the proposed General Regulations) do not fit into the categories used in ordinary utility rate making, because many of the costs do not fall clearly into either category. For example, in ordinary rate making, such items as the visitor facilities would not be "used or useful" in the production or distribution of power and, therefore, would not be permitted in the power rate base. As the comments of LADWP and CRC *et al.*, indicate, reasonable people can differ on whether costs should be chargeable to capacity or energy on a unique project such as the Boulder Canyon Project.

Western analyzed the effect of using the same approach which has been used in formulating Hoover rates for the last 45 years, hereinafter called the Historical Method, whereby the generating machinery and equipment charge is comparable to a capacity charge (capacity component), and the dam and appurtenant works charge is comparable to an energy charge (energy component). Applying the Historical Method to estimated future costs indicated that approximately 40 percent of the costs would be paid by the capacity component and 60 percent of the costs by the energy component.

Western analyzed what percentage of costs had been paid over the first 48 years of the Boulder Canyon Project and found that \$207,315,384 had been paid by the capacity component and \$327,051,085 by the energy component. Western found the capacity component paid 38.796 percent, and the energy component paid 61.204 percent. Also, Western analyzed the charges for Operating Year 1986 and found that the capacity component is paying \$10,720,330 or 46.531 percent of the total costs, while the firm energy component is paying \$12,318,898 or 53.469 percent of the total costs.

In reviewing the comments received, it became apparent that the results of estimating future costs were very sensitive to changes in the assumed inflation rate. This led Western to conclude that greater rate stability is provided if a percentage method of rate design is set, rather than using a formula stating which costs are included in which rate component.

Following the analysis of these methods, Western compared the economic impact of these methods and

the methods listed below on each proposed customer. The comparisons were based on the cost data provided by Reclamation and made available to the allottees. The numbers used do not necessarily reflect the actual and estimated costs which will be used to calculate the charges after June 1, 1987. The additional methods considered are:

1. The LADWP/Southern California Edison Company proposal for 35 percent capacity and 65 percent energy components;
2. The CRC Joint Allottee proposal for 70 percent capacity and 30 percent energy components;
3. The CRC Joint Allottee "compromise" proposal for 50 percent capacity and 50 percent energy components; and
4. The Western proposal for 45 percent capacity and 55 percent energy components.

The economic impact analysis was based on the Hoover Power Plant Act of 1984 allocation of capacity and energy and the most recently available estimated future costs.

The initial economic impact analysis considered the base charge and the additional impact of the Lower Basin Development Fund Contribution Charge with 100 percent applied to the energy usage.

An average annual composite customer's cost (AACCC) was developed for each customer and is summarized in the following table. The AACCC comparison is an example of one comparison made during Western's analysis of possible economic impacts on the customers using the various methods.

TABLE 1.—SUMMARY COMPARISON OF ECONOMIC IMPACT ANALYSIS<sup>1</sup> BOULDER CANYON PROJECT PROPOSED CUSTOMERS

[Estimated average annual composite customer's cost<sup>2</sup>]

Customer	AACCC at 40 pct capacity 60 pct energy (dollars per kWh)	AACCC at 35 pct capacity 65 pct energy (dollars per kWh)	AACCC at 70 pct capacity 30 pct energy (dollars per kWh)	AACCC at 50 pct capacity 50 pct energy (dollars per kWh)	AACCC at 45 pct capacity 55 pct energy (dollars per kWh)
APA.....	\$0.01409	\$0.01409	\$0.01415	\$0.01412	\$0.01411
CRC.....	.01136	.01145	.01087	.01120	.01128
MWD.....	.00991	.01017	.00832	.00938	.00964
LADWP.....	.01443	.01413	.01623	.01503	.01473
SCE.....	.01800	.01725	.02248	.01950	.01875
Anaheim.....	.01501	.01464	.01726	.01576	.01539
Azusa.....	.01529	.01488	.01773	.01610	.01589
Banning.....	.01705	.01643	.02083	.01930	.01768
Burbank.....	.01490	.01454	.01706	.01526	.01526
Colton.....	.01484	.01449	.01696	.01555	.01520
Glendale.....	.01067	.01084	.00966	.01034	.01051
Pasadena.....	.01108	.01120	.01037	.01084	.01096
Riverside.....	.01501	.01464	.01726	.01576	.01539
Vernon.....	.01516	.01477	.01751	.01594	.01555
Boulder City.....	.01042	.01062	.00922	.01002	.01022

<sup>1</sup> With 100% of Lower Basin Development Fund Contribution Charge on Energy.

<sup>2</sup> Customer's total estimated cost (Estimated Base Charge amount + Estimated Lower Basin Development Fund Contribution Charge amount) divided by customer's allocated energy (kWh).

In summary, after comparing the economic impacts of the various methods on the individual customers, Western determined that a Base charge with a 45 percent capacity component and a 55 percent energy component has the most equitable economic impact on the majority of the proposed contractors and was, therefore, the most fair and equitable rate design for the Base Charge, provided that the Lower Basin Development Fund Contribution Charge is applied 100 percent to energy usage. This decision was based on the fact that: (1) A traditional method is, at best, difficult to apply to the Boulder Canyon Project; (2) the proposed method is based on accepted historical Boulder Canyon Project cost patterns and policies; and (3) the Lower Basin Development Fund Contribution Charge

would be applied 100 percent to energy usage.

Subsection (b). Information was requested on this subsection, but no specific data was requested. Earlier comments were received regarding the charge for capacity, taken or not.

The language used in the revised proposed General Regulations reflects Western's proposed policy for billing for Boulder Canyon Project power. Capacity will be billed based on the amount reserved by contract for the contractor. Energy will be billed based on the delivery amount, either scheduled or metered.

#### (4) Section 904.9 Lower Basin Development Fund Contribution Charge

Information was requested on this section, but on specific data was



requested. Earlier comments have been received regarding Western's proposal to apply the charge 100 percent on energy usage.

In determining how to apply the Lower Basin Development Fund Contribution Charge, Western found that the administrative problems associated with applying it partially on capacity created unacceptable results. In a below-average water year, Western would collect too much money from the capacity charge; in an above-average water year, too little would be collected. Additionally, if one customer requested that Western purchase firming energy, the capacity component of the Lower Basin Development Fund Contribution Charge associated with that sale would be applied to all customers in that State, even though they did not request firming energy themselves.

In addition to equitable and the administrative problems associated with applying the charge partially on the capacity component, under traditional rate making, the charge is totally variable and, therefore, should be an energy charge. Under the Historical Method of rate making, it is clearly not a generating machinery and equipment (i.e., capacity) charge; therefore, it is a dam and appurtenant works (i.e., energy) charge.

#### (5) Section 904.10 Excess Capacity

Subsection (a). Information on "the reference to reservation to Western of requirements for integration of operation of the Federal system or for other Federal Project activities as determined by the United States" was requested. Additional comments have been received regarding Western's proposal to retain any excess capacity for Project integration.

The primary statutory basis for operational integration of the Federal system commencing in 1987 is the Hoover Power Plant Act of 1984 (43 U.S.C. 619 *et seq.*). Additional statutory authority is contained in the Colorado River Basin Project Act and the Colorado River Storage Project Act.

The subject of integration of the operation of the Federal system was a topic of discussion and consideration during the public proceedings which preceded the May 9, 1983, "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (48 FR 20872). The Marketing Criteria specifically state: "Projects will be operationally integrated to improve the efficiency of the Federal system."

In May 1980, Reclamation published a report entitled "Upgrading Program, Hoover Power Plant Special Report," which indicated that the capacity of the

uprated plant at maximum head totaled 2,022 thousand kilowatts. This information was available to the public during the negotiations leading us to the Hoover Power Plant Act of 1984; however, the Act allocated only 1,951 thousand kilowatts of this estimated capacity. The Act also ratified Western's Marketing Criteria published in a Federal Register Notice (48 FR 20872) dated May 9, 1983, which deals with excess capacity under Part VII, section A, pages 20885-6, which also appears in the Federal Register Notice (49 FR 50582) dated December 28, 1984, publishing the Conformed Criteria (page 50588). In responding to a Nevada discovery interrogatory in November 1982, in the lawsuit Nevada v. United States, docket No. CV-LV 82 441 RDF, Western responded that, among other things, Hoover capacity would be used to supply the Parker-Davis Project reserves.

Subsection (b). Information was requested on "the reference to 'benefit(s)' and unilateral determination thereof and of their value by the United States."

The responsibility for the Project administration is specifically vested in the United States by the Boulder Canyon Project Act of 1928 (43 U.S.C. 617 *et seq.*), the Boulder Canyon Project Adjustment Act of 1940 (43 U.S.C. 618 *et seq.*), and the Department of Energy Organization Act of 1977 (42 U.S.C. 7107 *et seq.*). The determination by Western of the benefits (to and from the Boulder Canyon Project) and their value will be made in accordance with the facts at the time on a case-by-case basis.

Interested parties will have the opportunity to express, before Western, their views on these determinations in rate hearings; if they still are not satisfied, again before the Federal Energy Regulatory Commission.

#### (6) Section 904.11 Excess Energy

Subsections (b), (c), (d), and (e). Information was requested on this section, but no specific data was requested. Earlier comments have been received regarding the allocation of third priority excess energy in California and the charge for such energy.

In all likelihood, Western will have only one customer in Arizona and one in Nevada; this allocation by Western of excess energy among customers is a matter whose effects must be considered with respect to Western's several California customers. Due to the wide disparity in the California customers' capacity or plant factors, Western attempted to find a formula that would be equitable to all the California customers. The Hoover plant

factors for California customers vary from a low of 10.3 percent to a high of 59.6 percent. While the customer with a 59.6 percent plant factor sees the Hoover Powerplant as an energy producer, the value of the Hoover resource to the low plant factor customer is reduced because of its inability to use Hoover capacity during the entire duration of its peak. In considering the legitimate claims of both kinds of customers to the available excess energy, allocating excess energy strictly on the basis of capacity fails to recognize that those excess-energy years are the same years when The Metropolitan Water District of Southern California would most likely have additional water to pump. On the other hand, allocating excess energy, strictly on the basis of energy, deprives the low-plant factor customers of the ability to enhance the value of the Hoover resource by meeting the entire duration of its peak. Therefore, in balancing these interests, Western found the most equitable formula was one which recognized both capacity entitlements and energy entitlements, as the present formula does.

The charge for excess energy was determined by Western in accordance with its authority to determine such charges provided for in the Boulder Canyon Project Act of 1928, Boulder Canyon Project Adjustment Act of 1940, Department of Energy Organization Act of 1977, and Delegation Order 0204-108 (48 FR 55664) dated December 14, 1983.

First priority entitlement to excess energy should be priced at the Project firm energy charge, because that was the understanding at the time that first priority excess energy entitlement was created.

Second priority entitlement to excess energy, in reality, completes the firm energy entitlements provided for in the Hoover Power Plant Act of 1984 and, therefore, is appropriately priced at the Project firm energy charge.

Third priority excess energy is being offered to the contractors on an if, as, and when-available basis; therefore, Western determined that it should be offered at a charge developed by the Administrator under section 5 of Delegation Order 0204-108.

#### (7) Section 904.12 Capacity Reductions

Subsection (b). Information was requested on this subsection, but no specific data was requested. Earlier comments have been received regarding the formula for allocating reductions.

Western has determined that all entities benefiting from the Boulder Canyon Project resources shall share equally in any capacity reductions



during temporary generator outages at Hoover Dam.

Prior to starting the public comments forum on July 1, 1985, on the proposed General Regulations, Western presented a brief discussion on its proposed power delivery schedule during the Uprating Program construction period. After comments were received on Western's proposal, Western modified its position. The modified position is reflected in the revised proposed General Regulations. The formula proposed by Western provides a means of allocating any temporary reduction proportionately to all entities. Prior to completion of the Uprating Program, excess capacity will not be considered in the formula. After the Uprating Program is completed, the amount of actual excess capacity (if any above 1,951 thousand kilowatts) will be determined and reflected in the formula.

In general, the proposed formula  $CC = A(rC/mC)$  should be applied as follows where:

CC=Amount of contractor's capacity reduction.

A=Contractor's capacity as it exists at the time of the reduction.

rC=Amount of capacity reduction.

mC=Maximum capacity at time of reduction. (This would be 1,951 thousand kilowatts prior to completion of the Uprating Program, and the actual capacity available after the completion of the Uprating Program.)

Example 1:

Prior to completion of Uprating Program:

A=Contractor's capacity at time of reduction is equal to 2,000 kilowatts.

rC=Temporary reduction is equal to 100,000 kilowatts.

mC=Maximum capacity is equal to 1,951,000 kilowatts (prior to completion of Uprating Program).

Formula would be:  $2,000 \times (100,000/1,951,000) = 103$  (which is the contractor's amount of reduction).

Result: Contractor's capacity of 2,000 kilowatts would be reduced by 103 kilowatts to 1,897 kilowatts.

Example 2:

After completion of Uprating Program:

A=Contractor's capacity at time of reduction is equal to 2,000 kilowatts.

rC=Temporary reduction is equal to 100,000 kilowatts.

mC=Maximum capacity is equal to 2,030,000 kilowatts (after completion of Uprating Program).

Formula would be:  $2,000 \times (100,000/2,030,000) = 99$  (which is the contractor's amount of reduction).

Result: Contractor's capacity of 2,000 kilowatts would be reduced by 99 kilowatts to 1,901 kilowatts.

#### (8) Section 904.15 Repayment Periods

Subsection (a)(1). Information was requested on this subsection, but no specific data was requested. Western's position on the repayment of flood control is addressed in the response for information on § 904.6 (c)(4).

#### (9) Section 904.16 Disputes

Information was requested on this section, but no specific data was requested.

Western determined that a provision "by which any dispute or disagreement as to interpretation or performance of the provision of \* \* \* applicable regulations \* \* \* may be determined by arbitration or court proceedings" is required by the Hoover Power Plant Act of 1984. Therefore, § 904.16 has been written in accordance with that requirement, utilizing guidance and precedent taken from existing Boulder Canyon Project contractual disputes language.

#### (10) Conformed Criteria

Information was requested on "the continuing failure to correct the conformed criteria. \* \* \*

This subject is not a part of the proceedings on the General Regulations. Western will deal with any problems with the Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (Conformed Criteria) outside this process.

#### (11) Los Angeles Department of Water and Power Agreement for Power Generation Control at Hoover Powerplant

Information was requested on "avoidance of adverse impacts on the other allottees if the Bureau—Western—Los Angeles agreement respecting control of certain generating units is implemented."

This subject is not within the scope of the proceedings on the General Regulations.

The subject contract provides: "The City will cooperate fully with the United States to develop the definitive scheduling arrangements whereby capacity deliveries to the City, Municipalities, and other contractors can be satisfied."

#### (12) Use of Synchronized Generation by Uprating Program Contractors

This subject is not a part of the proceedings on the General Regulations.

The City of Vernon has asked three questions relating to the scheduling of synchronized generation from Hoover. Western agrees, and, in fact, has proposed that the Uprating Program

contractors schedule "synchronized" generation on an hour-to-hour basis. However, Western believes that Vernon's concerns, in its three questions, relate to the dynamic moment-to-moment scheduling of generation for the purposes of regulation, with the attendant use of unloaded generation for regulating reserve and for spinning reserve. The use of generation for the purpose of regulation, ramping, and spinning reserve through the use of a dynamic signal was provided for in the Conformed Criteria. It was also a subject matter of the public proceedings on the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects. Comments on this subject were answered in detail during those proceedings. It is Western's position that Western's policy on this subject was not modified by the Hoover Power Plant Act of 1984; the Act, in fact, ratified Western's Marketing Criteria in the May 9, 1983, Federal Register Notice (48 FR 20872). This subject was addressed at page 20882 of that Notice and at page 50585 in the December 23, 1984, Federal Register Notice (49 FR 50582) publishing the Conformed Criteria.

The specific questions asked by Vernon, and Western's responses are as follows:

1. Has Western performed any studies which would demonstrate that Vernon's ability to schedule synchronized generation during Vernon's peak periods would affect the operation of the Boulder Canyon Project as envisioned by Western?

Several studies and reports are available on this subject. The city of Vernon is referred to the October 31, 1975, General Accounting Office letter on the operation of Hoover Powerplant, the Reclamation report by the Engineering and Research Center on the Generation Efficiency Loading Algorithm (report number REC-ERC-83-8), and the 1984 Hoover Operation Concepts Report jointly written by Reclamation and Western.

2. Will Vernon's ability to schedule synchronized generation through dynamic signals affect Western's operation of the Boulder Canyon Project and/or the Federal System when Vernon's load diversity to other contractors is considered and if so, in what manner will this be detrimental to the operation of said system and/or detrimental to the public interest?

The latter two reports noted in the prior response (question 1) show that there is generally a certain amount of spinning reserves available from Hoover Powerplant with essentially no efficiency penalty. The amount of "free"



reserves generally increases as the amount of loaded generation from the plant is increased, but the amount varies as units are brought on line or taken off line to meet changing schedules. Any amount of spinning reserves requested over and above this "free" reserve decreases the overall plant efficiency. Requiring units to be operated at less than maximum efficiency, or by requiring more units than optimum to be online, increases losses from motoring energy or inefficient operation. The effect of inefficient operation is to reduce the amount of energy available from a fixed water supply. Historically, the amount of unloaded generation placed online by the Hoover contractors has exceeded the reserves which could be made available with maximum plant efficiency. Requiring units to be operated at less than maximum efficiency, or by requiring more units than optimum to be on line, increases losses from motoring energy or inefficient operation. The effect of inefficient operation is to reduce the amount of energy available from a fixed water supply. Historically, the amount of unloaded generation placed online by the Hoover contractors has exceeded the reserves which could be made available with maximum plant efficiency. Therefore, allowing use of Hoover generators for dynamic scheduling of generation and for spinning and regulating reserves reduces the energy available to all contractors over that which could be generated.

3. What is the justification for restricting the use of capacity and energy for synchronized generation to Schedule A contractors in Western's draft of the power sales contract?

Western intends to offer synchronized generation on an hour-to-hour basis to all Boulder Canyon Project contractors; however, only renewal contractors will be allowed to use generation for regulation, ramping, or spinning reserve.

In providing for the dynamic scheduling of power for renewal (Schedule A) customers in the May 9, 1983, Marketing Criteria (48 FR 20872) and in the Conformed Marketing Criteria (49 FR 50582, December 28, 1984), Western made available the Hoover Powerplant generation for regulation to accommodate the level of support that had historically been utilized by the renewal contractors. Maintaining unloaded generation for spinning or regulating reserves reduces powerplant efficiency which, in turn, reduces energy which can be made available to other contractors.

### *(13) Contract Negotiations in Parallel With General Regulations*

The question was asked at the February 12, 1986, public comment forum if the Boulder Canyon Project power contracts could be negotiated in parallel with the development of the General Regulations.

It is Western's position that Western will, to the extent possible, negotiate the subject contracts in parallel with the development of the General Regulations. It must be understood that Western will not negotiate on subjects that are provided for in the General Regulations.

### **Documents in Public File**

The following materials relative to the research performed, analysis made, and other information supporting the revised proposed General Regulations are available for inspection and copying at the Boulder City Area Office. Western has provided a copy of these documents to all interested parties.

1. Reporter's Transcript of Proceeding, Public Comment Forum on Revised Proposed General Regulations, February 12, 1986.
2. Statement dated February 12, 1986, from the Colorado River Commission of Nevada "Request for Additional Analysis and Information Regarding Western Area Power Administration's Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project."
3. Federal Register Notice (51 FR 3471) dated January 28, 1986, "Notice of Public Comment Form."
4. Federal Register Notice (51 FR 4376) dated February 4, 1986, "Future Notice of Public Comment Form."
5. Letter dated January 10, 1986, to All Interested Parties from Western (with copies of comments received) regarding the revised proposed General Regulations published in the Federal Register (50 FR 49050) on November 29, 1985.
6. Reporter's Transcripts of Proceedings, Public Comment Forum on Revised Proposed General Regulations, December 19, 1985.
7. Federal Register Notice (50 FR 49050) dated November 29, 1985, "Proposed Rulemaking and Request for Comments," announcing the revised proposed General Regulations.
8. "Memorandum for Tom Hine Re Hoover Conformed Criteria From Jack L. Stonehocker on Behalf of Colorado River Commission of Nevada, Arizona Power Authority, Metropolitan Water District of Southern California and the Cities of Burbank, Glendale, Pasadena, Anaheim, Azusa, Banning, Colton, and Riverside," received November 5, 1985.
9. Letter to Western dated October 23, 1985, from the Colorado River Commission regarding draft supplemental comments on the Base Charge, the Contribution Charge, and the charge on excess energy.
10. Letter to All Interested Parties dated

October 21, 1985, (with copies of comments received) on the proposed General Regulations published in the Federal Register (50 FR 20732) on May 17, 1985.

11. Letter to Western dated September 24, 1985, from the Colorado River Commission, transmitting three draft position papers in respect to the "Hoover Items."

12. Federal Register Notice (50 FR 37835) dated September 18, 1985, 10 CFR 903, "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions."

13. Federal Register Notice (50 FR 30447) dated July 26, 1985, "Notice of Delay in Comment Period on the Proposed General Regulations for the Charges for the Sale of Power From the Boulder Canyon Project."

14. Letter to Western dated July 5, 1985, from the Colorado River Commission transmitting a list of items which the Hoover allottees propose to discuss during the delay on the General Regulations, titled "Hoover Items."

15. Letter to Colorado River Commission dated July 1, 1985, from Western responding to a request for delay in the public process on the General Regulations.

16. Proposed Power Delivery Schedule, July 1, 1985, presentation and slides.

17. Reporter's Transcripts of Proceedings, Public Comment Forum on Proposed General Regulations, July 1, 1985.

18. Letter to All Interested Parties dated June 28, 1985, from Western regarding questions asked at the public information forum on June 4, 1985.

19. Letter to Western dated June 27, 1985, from Jack L. Stonehocker, Colorado River Commission, requesting a delay in the proceedings on the proposed General Regulations.

20. Federal Register Notice (49 FR 25230) dated June 20, 1984, 18 CFR 300, "Filing Requirements and Procedures for Approving the Rates of Federal Power Marketing Administrations."

21. Draft Power Repayment Study, June 4, 1985, presentation.

22. Memorandum dated June 3, 1985, from Gary D. Miller, Attorney for the General Counsel, regarding "Boulder Canyon Project/Repayment of the Flood Control Allocation."

23. Proposed General Regulations public information forum, June 4, 1985, presentation and slides.

24. Letter to Colorado River Commission and the Arizona Power Authority dated May 3, 1985, from Western responding to an April 18, 1985, letter regarding the conformance of the "General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects" to the Hoover Power Plant Act of 1984.

25. Federal Register Notice (50 FR 20732) dated May 17, 1985, "Proposed Rulemaking," announcing the proposed General Regulations.

26. Letter to Western dated April 18, 1985, from the Colorado River Commission and the Arizona Power Authority regarding the conformance of the "General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects" to the Hoover Power Plant Act of 1984.



27. Memorandum dated April 5, 1985, from the Assistant Solicitor, Branch of Water and Power, Division of Energy and Resources, regarding "Repayment of Flood Control Allocation—Boulder Canyon Project."

28. Letter to Western dated March 27, 1985, from the Bureau of Reclamation regarding "Post-1987 Repayment Requirements of the Boulder Canyon Project."

29. Federal Register Notice (50 FR 7823) dated February 26, 1985, announcing corrections to the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

30. Federal Register Notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

31. "1984 Hoover Operation Concepts Report," jointly written by the Bureau of Reclamation and Western.

32. Delegation Order 0204-108, published in the Federal Register (48 FR 55664) December 14, 1983.

33. Federal Register Notice (48 FR 20872) dated May 9, 1983, publishing the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."

34. Consolidated Power Marketing Plan public information forum, August 29, 1980, presentation and slides.

35. Consolidated Power Marketing Plan public information forum, May 16, 1980, presentation and slides.

36. Department of the Interior, Bureau of Reclamation "Upgrading Program, Hoover Powerplant, Special Report," issued May 1980, supplemented January 9, 1985, and revised September 1985.

37. Consolidated Power Marketing Plan public information forum, February 22, 1980, presentation and slides.

38. Consolidated Power Marketing Plan public information forum, November 30, 1979, proceedings of the meeting.

39. Secretarial Order RA 6120.2, Power Marketing Administration Financial Reporting, September 20, 1979.

40. October 31, 1975, General Accounting Office letter on the operation of Hoover Powerplant.

41. Bureau of Reclamation Report Number REC-ERC-83-8, Generation Efficiency Loading Algorithm.

42. Worksheets on analysis made on the development of Base Charge.

43. Worksheets on analysis made on the development of Lower Basin Development Fund Contribution Charge.

44. Worksheets on analysis made on allocation of excess energy in California.

Issued at Golden, Colorado, March 20, 1986.

William H. Clagett,  
Administrator.

[FR Doc. 86-8002 Filed 4-7-86; 3:48 pm]

BILLING CODE 6450-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

#### 19 CFR Part 101

#### Organization and Functions; Proposed Consolidation of New Orleans, Gramercy, and Baton Rouge, Louisiana, Customs Ports for Marine Purposes

**AGENCY:** Customs Service, Department of the Treasury.

**ACTION:** Proposed limited consolidation of ports.

**SUMMARY:** This document proposes to consolidate the ports of entry of New Orleans, Gramercy, and Baton Rouge, Louisiana, for marine purposes only. This change, if adopted, would enable Customs to obtain more efficient use of its personnel, facilities, and resources. It would eliminate duplication of port functions and permit better control of staffing resources without impairing services to area businesses or the general public. Moreover, it would simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

**DATE:** Comments must be received on or before June 9.

**ADDRESS:** Written comments (preferably in triplicate) may be addressed to, and inspected at, the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Operational Aspects: Richard C. Coleman, Office of Inspection (202-566-8157). Legal Aspects: Donald H. Reusch, Carriers, Drawback and Bonds Division (202-566-5732), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts, with ports of entry within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs and related laws.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and

to provide better service to carriers, importers, and the public, Customs is proposing to consolidate, for marine purposes only, the ports of entry of New Orleans, Gramercy, and Baton Rouge, Louisiana, located in the New Orleans, Louisiana, Customs district in the South Central Region.

Inasmuch as these three ports are located within approximately 60 miles of one another on the Mississippi River and perform similar services, it was estimated that the proposed consolidation would significantly reduce expenses without impairing Customs ability to provide services to area businesses or to the general public.

Under this proposal, the laws and regulations administered and enforced by Customs relating to the entry of merchandise would continue to apply at the ports of New Orleans, Gramercy, and Baton Rouge, with each of these ports retaining its port code as well as its current geographical limits. However, the three ports would be considered to be one port for the purposes of the navigation laws. All of the requirements prescribed by the navigation laws administered and enforced by Customs, such as reporting the arrival and making formal entry of vessels arriving at the consolidated marine port from a foreign or another U.S. port (depending upon the vessel's nationality); and obtaining a permit to proceed between the consolidated port and other U.S. ports, would have to be complied with, as is now the case in existing consolidated ports.

It is anticipated that the proposed consolidation also will result in reducing penalties incurred under the navigation laws if carriers fail to enter and properly clear merchandise being shipped in a residue cargo movement within the consolidated marine port (i.e., the ports of New Orleans, Gramercy, and Baton Rouge), and will reduce paperwork for carriers, importers, and Customs, because of the reduction of penalty cases.

If this proposal is adopted, there would be no change in the current geographical limits of each port. However, it will be necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), to reflect the consolidation of these ports for the purposes of the navigation laws.

#### Executive Order 12291

Because this proposal relates to the organization of Customs, it is not a regulation or rule subject to E.O. 12291.



### Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are not applicable to this proposal because it will not have a significant economic impact on a substantial number of small entities.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the affected areas, it is not expected to be significant because changes in the Customs field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

### Lists of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

### PART 101—GENERAL PROVISIONS

#### Proposed Amendment to the Regulations

If the proposed consolidation of the ports of New Orleans, Baton Rouge, and Gramercy, Louisiana, for the purposes of the navigation laws, is adopted, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), will be amended as follows:

In the South Central Region—New Orleans La., under the column headed "Name and headquarters", the following phrase would be added under the listing "New Orleans, La.":

"(The ports of New Orleans, Baton Rouge, and Gramercy, consolidated for purposes of the navigation laws. See T.D. 86—, 51 FR —, 1986.)"

#### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the

Regulations Control Branch, Room 2426, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

#### Authority

This change is proposed under 19 U.S.C. 66 and 1624 as well as the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (47 FR 2449).

#### Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Approved: March 14, 1986.

William von Raab,  
Commissioner of Customs.

Francis A. Keating II,  
Assistant Secretary of the Treasury.  
[FR Doc. 86-8026 Filed 4-9-86; 8:45 am]  
BILLING CODE 4820-02-M

### Internal Revenue Service

#### 26 CFR Part 1

[LR-236-84]

#### Information Returns Relating to Sales or Exchanges of Certain Partnership Interests; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to information returns, statements, and notifications required where there is a sale or exchange of certain partnership interests.

**DATES:** The public hearing will be held on Thursday, June 12, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, May 29, 1986.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the

Commissioner of Internal Revenue, Attn.: CC:LR:T (LR-236-84), Washington, DC 20224.

#### FOR FURTHER INFORMATION CONTACT:

Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935, not a toll-free call.

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 6050K of the Internal Revenue Code of 1954. The proposed regulations appeared in the *Federal Register* for Monday, December 23, 1985 (50 FR 52332).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, May 29, 1986, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Paul A. Francis,  
Acting Director, Legislation and Regulations Division.

[FR Doc. 7934 Filed 4-9-86; 8:45 am]

BILLING CODE 4830-01-M

#### 26 CFR Part 1

[EE-95-84]

#### Income Taxes; Limitations on Alternative Benefits; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.



**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to certain restrictions on an employee's right to receive alternative forms of benefits under qualified plans.

**DATES:** The public hearing will be held on Thursday, May 22, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, May 8, 1986.

**ADDRESS:** The public hearing will be held in the IRS Chief Counsel Conference Room, Fourth Floor, Room 4415, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn.: CC:LR:T (EE-95-84), Washington, DC, 20224.

**FOR FURTHER INFORMATION CONTACT:** Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 401 and 411 of the Internal Revenue Code of 1954. The proposed regulations appeared in the *Federal Register* for Thursday, January 30, 1986 (51 FR 3798).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Thursday, May 8, 1986, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**James J. McGovern,**

*Director, Employee Plans and Exempt Organizations Division.*

[FR Doc. 86-7935 Filed 4-9-86; 8:45 am]

BILLING CODE 4830-01-M

## 26 CFR Parts 1 and 31

[LR-214-82]

### Income and Employment Taxes; Treatment of Qualified Real Estate Agents and Direct Sellers as Nonemployees; Determination of Employer Liability; Information Reporting of Direct Sales and Payments; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the following subjects: (1) The treatment of qualified real estate agents and direct sellers as nonemployees for Federal income and employment tax purposes, (2) the determination of employer liability for income tax withholding and employee social security taxes where the employer treated an employee as a non-employee for purposes of such taxes, and (3) information reporting of direct sales and payments of remuneration for services.

**DATES:** The public hearing will be held on Wednesday, June 18, 1986, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, June 4, 1986.

**ADDRESS:** The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-214-82), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Faye Easley of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202-566-3935, not a toll-free call.

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 3508, 3509,

and 6041A of the Internal Revenue Code of 1954. The proposed regulations appeared in the *Federal Register* for Tuesday, January 7, 1986 (51 FR 619).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Wednesday, June 4, 1986, an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Paul A. Francis,**

*Acting Director, Legislation and Regulations Division.*

[FR Doc. 86-7933 Filed 4-9-86; 8:45 am]

BILLING CODE 4830-01-M

## 26 CFR Part 1

[LR-19-80]

### Unisex Annuity Tables

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Corrections to proposed rule.

**SUMMARY:** This document contains corrections to a notice of proposed rulemaking that was published in the *Federal Register* on March 24, 1986 (51 FR 9978). The notice of proposed rulemaking (LR-19-80) that is the subject of these corrections set forth proposed regulations relating to the annuity tables used to compute the portion of the amount received as an annuity that is includible in gross income for Federal income tax purposes.

**FOR FURTHER INFORMATION CONTACT:** Annette J. Guarisco of the Legislation and Regulations Division, Office of



Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202-566-3422 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 24, 1986, the Federal Register published (51 FR 9978) proposed amendments (LR-19-80) that would update and gender-neutralize the annuity tables used to determine the exclusion ratio applicable to amounts received as annuities under annuity, endowment, or life insurance contracts.

##### Need for Correction

As published, the preamble of LR-19-80, on page 9979, third column, stated that the new tables in § 1.403(b)-1(d)(4) are proposed to be effective for taxable years beginning after May 23, 1986. The correct proposed effective date for those tables is taxable years beginning after July 1, 1986, as stated in the **DATES** paragraph in the preamble.

There are three typographical errors in which the mathematics symbol for the subtraction operation was inadvertently used instead of the mathematics symbol for the division operation.

##### Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (LR-19-80), that was the subject of FR Doc. 86-6293, is corrected as follows:

**Paragraph 1.** In the preamble, on page 9979, third column, in the paragraph captioned "Amendment of Section 403(b) Regulations", the last line of that paragraph that reads "beginning after May 23, 1986," is removed and the language "beginning after July 1, 1986," is added in its place.

**Par. 2.** In § 1.72-4 (d), paragraph (3)(v), on page 9982, first column, second paragraph of the *Example*, in lines 18 and 20, the parenthetical language "\$12,000-15.1)" and "\$13,000-20.3)" is removed and the language "\$12,000 ÷ 15.1)" and "\$13,000 ÷ 20.3)" is added in their respective places.

**Par. 3.** In § 1.72-5 (b), paragraph (5) (iv) *Example (1)*, on page 9986, second column, in line 2, the language "\$17,887-\$20,520," is removed and the language "\$17,887 ÷ \$20,520," is added in its place.

Paul A. Francis,

Acting Director, Legislation and Regulations Division.

[FR Doc. 86-6084 Filed 4-9-86; 8:45 am]

BILLING CODE 4830-01-M

#### Bureau of Alcohol, Tobacco and Firearms

##### 27 CFR Part 5

[Notice No. 590; Re: Notice Nos. 480, 491, 549, 555, 577]

##### Reduced Proof Distilled Spirits Products; Extension of Comment Period

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Extension of comment period for advance notice of proposed rulemaking.

**SUMMARY:** On January 13, 1986, ATF published Notice No. 577 at 51 FR 1393 reopening the comment period for an advance notice of proposed rulemaking (Notice No. 480 published at 48 FR 35460 on August 4, 1983) relating to new standards of identity for distilled spirits products bottled at less than the minimum bottling proof required by 27 CFR 5.22. One reason for reopening the comment period, cited in Notice No. 577, was a new petition on this issue submitted by Joseph E. Seagram and Sons, Inc. Seagram has petitioned for use of a word other than "diluted," currently required by ATF Ruling 75-32, for distilled spirits which are reduced in proof by centrifugal film evaporation, or any suitable distillery process other than dilution with water. The Scotch Whisky Association (SWA) has requested that the comment period be extended in order to complete tests of the proposed process. SWA members are in the process of producing experimental products with reduced alcohol content, using centrifugal film evaporation, and subjecting the resultant products to organoleptic examination. Their objective is to determine if such reduced proof products are qualitatively different from regular products with regard to aroma and taste. SWA states that their investigation will not be completed in time to evaluate the results and submit comments before the close of the comment period. Therefore, SWA requested a sixty day extension of the comment period. ATF finds this to be a valid reason for extending the comment period.

**DATE:** Written comments must be received by June 13, 1986.

**ADDRESSES:** Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385.

Copies of written comments received in response to all of the notices relating to this project will be available during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4406, Ariel Rios Federal Building, 12th and Pennsylvania Avenue, NW., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

John A. Linthicum, FAA, Wine and Beer Branch, (202) 566-7626.

**Authority:** This notice is issued under the authority contained in sec. 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended; 27 U.S.C. 205.

Approved: April 3, 1986.

Stephen E. Higgins,

Director.

[FR Doc. 86-7964 Filed 4-9-86; 8:45 am]

BILLING CODE 4810-31-M

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 117

(CGD7 86-11)

##### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, SC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the City of Beaufort the Coast Guard is considering a change to the regulations governing the Lady's Island bridge, mile 536 at Beaufort, by permitting the number of openings to be limited during certain periods. This proposal is being made because peak periods of vehicular traffic have changed. This action should accommodate the needs of vehicular traffic yet still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before May 27, 1986.

**ADDRESSES:** Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130. The comments and other materials referenced in this notice will be available for inspection and copying at 51 SW. 1st Avenue, Room 816, Miami, Florida. Normal office hours are from 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Walt Paskowsky, (305) 536-4103.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments,



data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

#### Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander Ken Gray, project attorney.

#### Discussion of Proposed Regulations

The bridge presently need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Saturday except on the hour. The proposal will double the number of authorized openings during curfew periods while increasing the daily curfew period by one hour. It will not increase the waiting time for vessels and should facilitate the movement of vehicular traffic.

#### Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures [44 FR 11034; February 26, 1979].

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117

continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 and 33 CFR 1.05-1(g).

2. Section 117.911 is proposed to be amended by revising paragraph (f) to read as follows:

#### § 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River

(f) *Lady's Island Bridge across the Beaufort River, mile 536 at Beaufort.* The draw shall open on signal; except that, from 6:30 a.m. to 9:30 a.m. and 4 p.m. to 6 p.m. Monday through Saturday except federal holidays, the draw need open only at 7:30 a.m., 4:30 p.m. and 5:30 p.m.

Dated: March 26, 1986.

R.P. Cuernoni,  
Rear Admiral, U.S. Coast Guard, Commander,  
Seventh Coast Guard District.

[FR Doc. 86-8019 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-14-M

#### POSTAL SERVICE

#### 39 CFR Part 10

#### Proposed International Surface Air Lift Service to Panama and Certain Far Eastern Countries

AGENCY: Postal Service.

ACTION: Proposed rule.

**SUMMARY:** Pursuant to an agreement with the postal administrations of Panama and certain Far Eastern countries as noted in the following table "International Surface Air Lift Service Rate Groups," the Postal Service intends to begin International Surface Air Lift Service to these countries at postage rates indicated in the tables below. The proposed service is scheduled to begin on June 14, 1986.

**DATE:** Comments must be received on or before May 10, 1986.

**ADDRESS:** Written comments should be directed to the General Manager, Rate Development Division, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, DC 20260-5350. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8620, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5350.

#### FOR FURTHER INFORMATION CONTACT:

Leon W. Perlman, (202) 268-2673.

**SUPPLEMENTARY INFORMATION:** The International Mail Manual is incorporated by reference in the Code of

Federal Regulations, 39 CFR 10.1.

Additions to the manual concerning the proposed new services, including the rate tables reproduced below, will be made in due course. Accordingly, although 39 U.S.C. 407 does not require advance notice and the opportunity for submission of comments on international service, and the provisions of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553) do not apply (39 U.S.C. 410(a)), the Postal Service invites interested persons to submit written data, views or arguments concerning the proposed International Surface Air Lift Transit Service to Panama and certain Far Eastern countries at the rates indicated in the table below.

#### List of Subjects in 39 CFR Part 10

Postal Service, Foreign relations.

#### PART 10—[AMENDED]

The authority citation for Part 10 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 407, 408.

#### International Surface Air Lift

(See following list for AMF and country groups)

#### a. Pound Rate\*

Origin AMF group	Rate group A	Rate group B	Rate group C	Rate group D	Rate group E
(1) Regular Service:					
East.....	\$1.95	\$2.22	\$2.55	\$2.86	\$3.40
Central.....	1.70	2.47	N/A	2.57	3.22
West.....	1.99	2.53	2.99	2.33	3.13
(2) Regular Service M-Bag:					
East.....	1.76	2.00	2.30	2.39	3.06
Central.....	1.53	2.22	N/A	2.31	2.90
West.....	1.79	2.28	2.69	2.10	2.82
(3) Transit Service Regular:					
East.....	N/A	2.41	N/A	N/A	3.60
Central.....	2.02	2.64	2.40	N/A	3.42
West.....	N/A	2.82	N/A	N/A	3.30
(4) Transit Service M-Bag:					
East.....	N/A	2.17	N/A	N/A	3.24
Central.....	1.82	2.38	2.16	N/A	3.08
West.....	N/A	2.54	N/A	N/A	2.97

#### International Surface Air Lift Service Rate Groups

#### Origin AMF's:<sup>1</sup>

\*Contact your local postmaster or customer services representative for possible discount rates based on type of mail matter and weight of mailing.

<sup>1</sup> All AMF's do not service all destination countries. Contact your local postmaster or customer services representative for list of AMF's and the destination countries served by particular AMF's.



*East*  
Boston  
New York City  
Philadelphia  
Washington, DC

*Central*  
Chicago  
Dallas  
Houston  
Miami

*West*  
Los Angeles  
San Francisco  
Destination Countries for Regular  
and/or Transit Service:

## Rate Groups

<i>A</i>	<i>B</i>
Belize	Albania
Columbia	Austria
Costa Rica	Belgium
Cuba	Bulgaria
Dominican Republic	Czechoslovakia
Ecuador	Denmark
El Salvador	East Germany
Guatemala	Finland
Haiti	France
Honduras	Great Britain
Jamaica	Greece
Mexico	Hungary
Netherlands	Iceland
Antilles	Ireland
Nicaragua	Italy
Panama <sup>2</sup>	Luxembourg
Trinidad & Tobago	Netherlands
Venezuela	Norway
	Poland
	Portugal
	Rumania
	Spain
	Sweden
	Switzerland
	West Germany
	Yugoslavia

*C*  
Argentina  
Bolivia  
Brazil  
Chile  
French Guyana  
Paraguay  
Peru  
Suriname  
Uruguay

*D*  
Hong Kong<sup>2</sup>  
India  
Japan  
Korea, So.<sup>2</sup>  
Taiwan<sup>2</sup>

*E*  
Australia  
China, Peoples Republic<sup>2</sup>  
Fiji Islands  
Malaysia<sup>2</sup>  
New Guinea  
New Zealand  
Philippines  
Singapore  
South Africa  
Thailand<sup>2</sup>

An appropriate amendment to 39 CFR 10.3 to reflect these changes will be published when the final rule is adopted.  
**Fred Eggleston,**

*Assistant General Counsel, Legislative Division.*

[FR Doc. 86-8012 Filed 4-9-86; 8:45 am]

BILLING CODE 7710-12-M

<sup>2</sup> Proposed new destination countries.

# ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 440

[OW-FRL-3000-3]

**Water Pollution; Ore Mining and Dressing Point Source Category; Gold Placer Mining; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Regulation; Data Availability and Request for Comment; Extension of Time for Comment Period**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of time for comment period.

**SUMMARY:** Due to the late availability of the public record for inspection by interested parties, the comment period for response to the Notice of Data Availability published in 51 FR 5563 on February 14, 1986, is extended.

**DATES:** The comment period on the Notice of Data Availability is extended from April 14, 1986 to May 14, 1986.

**ADDRESSES:** Send comments to William A. Telliard, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention ITD Docket Clerk. The supporting information and data described in this notice are available for inspection and copying at the following locations.

EPA Public Information Reference Unit, Room 2404 (Rear) PM-213, 401 M Street, SW., Washington, DC 20460.

EPA Region X Library, 1200 Sixth Avenue, Seattle, Washington 98101.

EPA Alaska Regional Office, Federal Building, Room E556, 701 C Street, Anchorage, Alaska 99513.

ADEC Northern Regional Office, 675 7th Avenue, Station K, Fairbanks, Alaska 99707.

The comments on this notice will be considered in the development of final effluent limitations guidelines and standards for the gold placer mining subcategory of the ore mining and dressing point source category. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Technical information may be obtained from Willis E. Umholtz at (202) 382-7191.

Dated: April 2, 1986.

**Edwin L. Johnson,**

*Acting Deputy Assistant Administrator for Office of Water.*

[FR Doc. 86-7937 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 766

[OPTS-83002A; FRL-3000-4]

**Toxic Substances; Polyhalogenated Dibenzo-p-Dioxins/Dibenzofurans; Testing and Reporting Requirements; Open Meeting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of open meeting.

**SUMMARY:** There will be a meeting on the proposed testing and reporting requirements rule for polyhalogenated dibenzo-p-dioxins/dibenzofurans, published in the *Federal Register* of December 19, 1985 (50 FR 51794). The meeting was requested by the Chemical Manufacturers' Association (CMA) to explore "an alternative course of action to that proposed by EPA" to accomplish the desired testing and reporting. Principal parties scheduled to participate in this meeting include the Chemical Manufacturers' Association, the Environmental Defense Fund (EDF), and the National Wildlife Federation (NWF). Other persons interested in participating should contact the TSCA Assistance Office, the meeting will be open to the public.

**DATE:** Tuesday, April 22, 1986, from 9:30 a.m. until 12:30 p.m..

**ADDRESS:** The meeting will take place at: Environmental Protection Agency, Rm. NE-103, Waterside Mall, 401 M St. SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St. SW., Washington, DC 20460, Toll-free: (800-424-9065), In Washington, DC: (554-1404), Outside the USA: (Operator-202-554-1404).

Dated: April 3, 1986.

**Don R. Clay,**

*Director, Office of Toxic Substances.*

[FR Doc. 86-8005 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

## Office of Pesticides and Toxic Substances

### 40 CFR Part 799

[OPTS-42012C; FRL-2815-2]

**Toxic Substances; Diethylenetriamine (DETA); Proposed Test Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.



**SUMMARY:** EPA has issued a final rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring that manufacturers and processors of diethylenetriamine (DETA; CAS No. 111-40-0) test this chemical for oral subchronic (90-day) toxicity, dermal absorption, chemical fate, and mutagenicity (both gene mutation and chromosomal aberration). The Agency is now proposing that the study plans and schedules for these tests submitted by an industry consortium be adopted, with certain revisions, as the test standards and reporting deadlines for DETA under this test rule.

**DATE:** Submit written comments on or before May 27, 1986.

**ADDRESS:** Submit written comments, identified by the document control number (OPTS-42012C), in triplicate to: TSCA Public Information Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-108, 401 M Street SW., Washington, DC 20460.

A public version of the administrative record supporting this action (with any confidential business information deleted) is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, D.C. 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the U.S.A.: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** In the Federal Register of May 23, 1985 (50 FR 21398), EPA issued a final rule under section 4(a) of TSCA to require testing of DETA for oral subchronic (90-day) toxicity, dermal absorption, chemical fate, and mutagenicity (both gene mutation and chromosomal aberration). The Agency is now proposing that the industry-submitted study plans and schedules be adopted, with certain revisions, as the test standards and reporting deadlines for the required testing.

**I. Background**

Diethylenetriamine (DETA, CAS No. 111-40-0) was designated by the Interagency Testing Committee (ITC) for priority testing consideration (46 FR 28138; May 22, 1981). EPA issued a proposed rule, published in the Federal Register of April 29, 1982 (47 FR 18386) in response to the testing recommendations by the ITC on DETA.

EPA promulgated, under two-phase rulemaking, a final Phase I rule requiring testing of DETA (except for chronic oncogenicity bioassay testing) on May 23, 1985 (50 FR 21398), and, on the same day, proposed, under single-phase rulemaking, that DETA be tested in chronic oncogenicity bioassays, if this substance exhibited positive results in certain required mutagenicity tests (50 FR 21413). For a detailed discussion of EPA's findings and testing requirements for all tests, except chronic oncogenicity bioassay testing, refer to the final Phase I rule. In accordance with the Test Rule Development and Exemption Procedures for two-phase rulemaking in 40 CFR Part 790, persons subject to this rule were required to submit letters of intent to perform the testing or exemption applications. Those submitting letters of intent were required to submit proposed study plans and schedules for the testing required in the final Phase I rule.

On August 6, 1985 (Refs. 1 through 3), three U.S. manufacturers of DETA notified EPA of their intent to sponsor the testing required in the final Phase I test rule and submitted proposed study plans for all required testing, except for the following mutagenicity tests, on September 6, 1985: the dominant lethal assay, the heritable translocation assay, and the mouse specific locus assay. Also, on August 6, 1985, member companies of the Diethylenetriamine Producers/Importers Alliance (DPIA), a consortium composed of these three manufacturers of DETA and other current manufacturers or importers and one future manufacturer, requested an extension of the deadline for the submission of study plans for these three mutagenicity assays, which was denied by the Agency because adequate time was available to the DPIA for the preparation of these study plans before the legal deadline for October 7, 1985. On September 19, 1985, a meeting was held between EPA and DPIA representatives at which the study plans which had been submitted to the Agency on September 6, 1985, were discussed.

On September 30, 1985, legal counsel for the DPIA requested, on its behalf, an extension of the deadline for the submission of the study plan for the mouse specific locus assay, stating that the study plan could not be developed because the DPIA had been unable to identify a laboratory which would agree to perform the test in accordance with EPA's Good Laboratory Practice Standards (GLP's). EPA denied this request for an extension of the deadline for the submission of the study plan for the mouse specific locus assay because: (1) The legal deadline for such requests

(September 6, 1985) had passed; (2) as stated in 40 CFR 790.30(c)(2), the identification of a testing facility and personnel is not required in study plans, if the information is not available at the time of the study plan submission, but must be submitted before the initiation of testing; and (3) adequate time existed for the submission of this study plan before the legal deadline, using the TSCA Health Effects Test Guideline for this assay as guidance.

EPA is aware that the DPIA has been unable to identify a qualified testing facility which has had previous experience with performing the Mouse Specific Locus Test for Visible Markers and is capable of performing this test in a manner consistent with test rule requirements. However, this situation may well have changed by the time such testing becomes required for DETA, since testing facilities may decide to offer this test as they become familiar with the fact that the Mouse Specific Locus Test for Visible Markers is included in the tiered sequence of testing for gene mutation which the Agency routinely requires in TSCA section 4(a) test rules for chemical substances requiring testing for their potential to elicit gene mutations. In addition, the Agency is investigating what actions the EPA might take to aid in insuring that qualified testing facilities are available to perform this test for chemical substances subject to a test rule requirement for this assay. The Agency will reexamine the question of the availability of qualified testing facilities which are available to perform this test for DETA during the public program review of all of the mutagenicity data for DETA which, as described in the final Phase I test rule for DETA (50 FR 21398; May 23, 1985), will precede the initiation of the testing of DETA in the mouse specific locus test. Should the Agency conclude that no qualified testing facility is available at that time to perform this testing, EPA may propose to rescind this testing requirement for DETA and, after consideration of public comments on the proposed amendment to the test rule, issue a final decision whether to rescind this test rule requirement.

On October 7, 1985, the Agency received from the DPIA study plans for all of the tests required for DETA in the final Phase I test rule for this substance (50 FR 21398; May 23, 1985). After review and evaluation of these study plans, the Agency requested on November 7, 1985, that the DPIA make certain revisions. On December 2, 1985, the Agency received from the DPIA a complete set of all of the study plans for



all of the testing required for DETA. These study plans either contained revisions in response to the Agency's request or justifications, contained in cover letters, as to why certain suggested revisions were not made.

After review of the study plans for DETA submitted by the DPIA on December 2, 1985, the EPA concluded that certain revisions were still necessary to transform these plans into acceptable test standards for the testing required for DETA. These revisions were incorporated into a document entitled "Study Plans for Diethylenetriamine (DETA): Confirmation of EPA's Receipt, Evaluation, and Revision," which, together with the attached submitted study plans, shall be referred to as the EPA-approved modified study plans for DETA (Ref. 4).

EPA has modified the study plan contained in Ref. 4 identified as "Testing to Assess Potential Environmental Production of *N*-Nitroso Adducts of Diethylenetriamine" by deleting Alternative 1 on page 2 of that study plan and utilizing Alternative 2. Alternative 1 proposes that DETA be tested in sewage first and, if no nitrosamine derivatives of DETA are detected in this environmental sample, then testing in lake water and soil would not be conducted. Alternative 2 proposes that DETA be tested in sewage first and subsequently in lake water and soil, regardless of the test results obtained in sewage. The Agency believes that testing in all three environmental samples is necessary, and the final Phase I test rule for DETA (50 FR 21398; May 23, 1985) clearly requires that testing shall be conducted in all three environmental samples [40 CFR 799.1575(d)(i)]. Only Alternative 2 of this study plan fulfills this testing requirement for DETA.

EPA has also modified the study plan contained in Ref. 4 identified as the "Mouse Specific Locus Test for Visible Markers" by changing the last sentence in section D.1. on page 4 of the study plan to read: A laboratory with no prior experience with the test shall provide negative and positive control validation data conforming to the requirements of 40 CFR 798.5200(d)(4)(i), prior to conducting the assay. This revision is necessary to insure that the study plan conforms to the TSCA Health Effects Test Guidelines for this test (40 CFR 798.5200).

In the Agency's request to the DPIA (of November 7, 1985) for the revisions of study plans, EPA suggested that the time periods allowed in several of these study plans for the completion of testing be shortened. The Agency based these

suggestions upon previous regulatory experience with these tests within EPA's Office of Pesticides and Toxic Substances and discussions with commercial testing laboratories. Cover letters attached to the EPA-approved modified study plans for DETA (Ref. 4) explain that all of the testing, except for the Mouse Specific Locus Test for Visible Markers, will be conducted within the laboratories of member companies of the DPIA, that these laboratories are fully utilized for testing purposes at all times, that it would be quite difficult for these laboratories to arrange testing schedules around an estimated promulgation date for the final Phase II test rule for DETA, and that the time periods allowed in the submitted study plans allowed about 2 months for the testing laboratories to reschedule their activities as a result of the final Phase II test rule for DETA. With respect to the EPA-approved modified study plan for the Mouse Specific Locus Test for Visible Markers (Ref. 4), an attached cover letter asserts that the time period allowed in this study plan for the completion of testing was selected following consultation with various commercial testing laboratories; however, the letter also states that no qualified testing facility could be identified which has had previous experience in performing this test and is capable of conducting the test in a manner consistent with the test rule requirements.

The Agency has carefully considered the comments contained in cover letters attached to the EPA-approved modified study plans contained in Ref. 4, and is proposing reporting deadlines for the submission of final reports for all of the testing required for DETA which are essentially in agreement with the schedules proposed by the DPIA. However, for all testing required for DETA, the Agency is proposing that brief interim progress reports be submitted to EPA at consecutive 3-month intervals following the date on which each test becomes mandatory until the submission of the final report to EPA. The Agency believes that these interim progress reports are necessary to keep EPA informed of the current status of the testing required for DETA and to alert the Agency of any difficulties which the testing facilities may encounter during the course of testing. In addition, the Agency wishes to review the selection of dosage levels based upon preliminary data prior to the initiation of certain studies (e.g., the rodent heritable translocation assay, the mouse specific locus assay, and the mammalian subchronic toxicity study), and the required submission of interim

3-month reports will aid the EPA in this review function.

The Agency is now proposing that the EPA-approved modified study plans for DETA (and the reporting deadlines contained within them) be adopted as the test standards and reporting requirements for the required testing of DETA.

## II. Proposed Test Standards

A consortium of manufacturers (including importers) and a future manufacturer of DETA, known as the DPIA, including Union Carbide Corporation, Dow Chemical Company, Texaco Chemical Company, Berol Chemicals, Inc., AZS Corporation, BASF Wyandotte Corporation, and Air Products and Chemicals, Inc., has notified of EPA of their agreement to sponsor the testing required in the final Phase I rule for DETA in 40 CFR 799.1575. The DPIA has submitted proposed study plans for the required testing, which, after evaluation, the EPA has revised, resulting in the EPA-approved modified study plans for DETA (Ref. 4). The DPIA proposes to conduct the following studies: Fourteen-Day (Range-Finding) Dietary Toxicity Study with Diethylenetriamine in Albino Rats, Ninety-Day (Subchronic) Dietary Toxicity Study with Diethylenetriamine in Albino Rats, Absorption/Elimination Study of Diethylenetriamine following Dermal Application in Male and Female Fischer-344 Rats, Testing to Assess the Potential Environmental Production of *N*-Nitroso Adducts of Diethylenetriamine, Sex-linked Recessive Lethal Gene Mutation Test in *Drosophila melanogaster*, and an Evaluation of Diethylenetriamine in an *In Vitro* Chromosomal Aberration Assay Utilizing Chinese Hamster Ovary Cells. In addition, should the appropriate lower-tier mutagenicity tests yield certain results for DETA, the following mutagenicity tests will also be performed: Mouse Specific Locus Test for Visible Markers, Evaluation of Diethylenetriamine in the Mouse Bone Marrow Micronucleus Test, Dominant Lethal Assay of Diethylenetriamine in CD Rats, and Heritable Translocation Assay of Diethylenetriamine in CD-1 Mice.

The EPA-approved modified study plans for all of these tests (Ref. 4) are available for inspection in the public docket for this proposed Phase II test rule, and the Agency is now proposing these plans as the test standards for conducting the testing of DETA required under 40 CFR 799.1575. All of the testing conducted according to the EPA-approved modified study plans for



DETA will be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards as set forth in 40 CFR Part 792, and the EPA-approved modified health effects study plans all conform to the appropriate TSCA Health Effects Test Guidelines (40 CFR Part 798) or contain justified deviations from the appropriate guidelines.

### III. Reporting Requirements

EPA is proposing the schedules contained in the EPA-approved modified study plans for DETA (Ref. 4) as the reporting requirements. These reporting requirements are summarized as follows:

REPORTING DEADLINES FOR DETA

Test	Reporting deadline for final report (months after the effective date of final phase II rule)	Number of interim (3-month) reports required
Sex-linked recessive lethal test in <i>Drosophila</i>	14	3
Mouse specific locus assay	62 ± (48)	15
In vitro cytogenetics test	6	1
In vivo cytogenetics test	14 ± (8)	1
Dominant lethal test	20 ± (6)	1
Heritable trans-location assay	38 ± (18)	5
90-day subchronic toxicity test	15	4
Dermal absorption test	20	5
Chemical fate test	18	5

<sup>1</sup> Figure includes the time period required for previous required testing.

<sup>2</sup> Figure in parenthesis indicates the time period allowed for completion of the test itself, not including the time periods for previous required testing.

### IV. Issues for Comment

The Agency invites comments on the EPA-approved modified study plans for DETA; copies of these study plans are included in the public record for this rule. EPA also invites comment on EPA's proposed schedules for the required testing.

### V. Public Record

EPA has established a public record for this rulemaking (docket number OPTS-42012C). This record includes the basic information considered by the Agency in developing this proposal and appropriate Federal Register notices. The Agency will supplement the record with additional information as it is received.

This record now includes the following information:

#### A. Supporting Documentation

- (1) Final Phase I rule on diethylenetriamine.
- (2) Contact reports of telephone conversations.
- (3) Letters and memoranda related to this rulemaking.

(4) EPA and DPIA summaries of a meeting held on September 19, 1985, to discuss study plans for the required testing of DETA.

### B. References

- (1) Union Carbide Corporation. Letter from J. Cole to TSCA Public Information Office, USEPA. August 2, 1985.
- (2) Dow Chemical Company. Letter from W. Cornelius to TSCA Public Information Office, USEPA. July 29, 1985.
- (3) Texaco Chemical Company. Letter from F. Bentley to TSCA Public Information Office, USEPA. August 5, 1985.
- (4) Diethylenetriamine Producers/Importers Alliance (DPIA). Letter from A. Rautio (and attached study plans and associated cover letters for diethylenetriamine) to G. Timm, USEPA. November 27, 1985. (And attached Confirmation of EPA's Receipt, Evaluation, and Revision. February 10, 1986.)

The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in Rm. E-107, 401 M Street SW., Washington, DC 20460.

### VI. Other Regulatory Requirements

#### A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing required for DETA is discussed in the Phase I test rule (50 FR 21398; May 23, 1985).

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule, if promulgated, will not have a significant impact on a substantial number of small businesses for the following reasons:

1. There is not a significant number of small businesses manufacturing DETA.
2. Small manufacturers and small processors of DETA are not expected to perform testing themselves or to participate in the organization of the testing efforts.
3. Small manufacturers and small processors of DETA will experience only minor costs, if any, in securing exemption for testing requirements.

4. Small manufacturers and small processors are unlikely to be affected by reimbursement requirements.

### C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned the OMB control number 2070-0033. Submit comments on these requirements to the Office of Information and Regulatory Affairs: OMB; 726 Jackson Place, NW.; Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

### List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: April 3, 1986.

J. A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR Part 799 be amended as follows:

### PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.1575 by revising paragraphs (c)(1)(ii), (2)(ii), (3)(ii), and (4)(ii), and (d); adding paragraphs (c)(1)(iii), (2)(iii), (3)(iii), and (4)(iii); and removing paragraph (e) to read as follows:

#### § 799.1575 Diethylenetriamine (DETA).

- \* \* \* \* \*
- (c) \* \* \*
- (1) \* \* \*

(ii) *Test standards.* The testing shall be conducted in accordance with the following EPA-approved modified study plans (February 10, 1986) developed by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Sex-linked recessive lethal test in *Drosophila melanogaster*," and "Mouse specific locus test for visible markers." These EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, DC 20460; copies of these study plans are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* (A) The sex-linked recessive lethal test of DETA



in *Drosophila melanogaster* shall be completed and a final report submitted to the Agency within 14 months from the effective date of the final Phase II rule. Three interim progress reports shall be submitted at 3-month intervals.

(B) If required pursuant to paragraph (c)(1)(i)(B) of this section, the mouse specific locus test of DETA for visible markers shall be completed and a final report submitted to the Agency within 62 months from the effective date of the final Phase II rule. Fifteen interim progress reports shall be submitted at 3-month intervals, the first of which is due within 17 months of the effective date of the final Phase II rule.

(2) \* \* \*

(ii) *Test standards.* The testing shall be conducted in accordance with the following EPA-approved modified study plans (February 10, 1986) developed by the Diethylenetriamine Producers/Importers Alliance (DPIA): "In vitro cytogenetics test," "In vivo cytogenetics test," "Dominant lethal assay of diethylenetriamine in CD rats," and "Heritable translocation assay of diethylenetriamine in CD-1 mice." These EPA-approved modified study plans are available for inspection in EPA's OPTS Reading Room, Rm. E-107, 401 M Street SW., Washington, DC 20460; copies of these plans are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* (A) The *in vitro* cytogenetics testing of DETA shall be completed and a final report submitted to the Agency within 6 months of the effective date of the final Phase II rule. One interim progress report shall be submitted within 3 months of the final rule's effective date.

(B) If required pursuant to paragraph (c)(2)(i)(B) of this section, the *in vivo* cytogenetics testing of DETA shall be completed and final report submitted to the Agency within 14 months of the effective date of the final Phase II rule. One interim progress report shall be submitted within 9 months of the final rule's effective date.

(C) If required pursuant to paragraph (c)(2)(i)(C) of this section, the dominant lethal testing of DETA shall be completed and a final report submitted to the Agency within 20 months of the final Phase II rule. One interim progress report shall be submitted within 17 months of the final rule's effective date.

(D) If required pursuant to paragraph (c)(2)(i)(D) of this section, the heritable translocation testing of DETA shall be completed and a final report submitted to the Agency within 38 months of the effective date of the final Phase II rule. Five interim progress reports shall be submitted at 3-month intervals, the first

of which is due within 23 months of the effective date of the final Phase II rule.

(3) \* \* \*

(ii) *Test standards.* The testing shall be conducted in accordance with the following EPA-approved modified study plan (February 10, 1986) developed by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Ninety-day (subchronic) dietary toxicity study with diethylenetriamine in albino rats." This EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. E-107, 401 Street SW., Washington, D.C. 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The testing shall be completed and a final report submitted to the Agency within 15 months of the effective date of the final Phase II rule. Four interim progress reports shall be submitted at 3-month intervals.

(4) \* \* \*

(ii) *Test standard.* The testing shall be conducted in accordance with the following EPA-approved modified study plan (February 10, 1986) developed by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Dermal absorption." This EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C. 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The testing shall be completed and the final report submitted to the Agency within 20 months of the effective date of the final Phase II rule. Five interim progress reports shall be submitted at 3-month intervals.

(d) *Chemical fate testing.*—(1) *Required testing.* Testing to assess N-nitrosamine formation, resulting from aerobic biological and/or chemical transformation, shall be conducted with DETA using environmental samples of lake water, sewage, and soil.

(2) *Test standard.* The testing shall be conducted in accordance with the following EPA-approved modified study plan (February 10, 1986) developed by the Diethylenetriamine Producers/Importers Alliance (DPIA): "Chemical fate." This EPA-modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C. 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(3) *Reporting requirements.* The testing shall be completed and a final report submitted to the Agency within

18 months of the effective date of the final Phase II rule. Five interim progress reports shall be submitted at 3-month intervals.

(e) [Removed]

(Information collection requirements approved by the Office of Management and Budget under control number 2070-0033).

[FR Doc. 86-8007 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 61

[Docket No. FEMA-FIA]

#### National Flood Insurance Program; Insurance Rates

**AGENCY:** Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the chargeable (subsidized) rates, which apply to all structures located in communities participating in the Emergency Program of the National Flood Insurance Program and to certain structures in communities in the Regular Program.

**DATE:** All comments received on or before June 9, 1986 will be considered before final action is taken on the proposed rule.

**ADDRESS:** Persons who wish to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, DC 20472.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 "C" Street, SW., Washington, DC 20472; telephone number (202) 646-3422.

**SUPPLEMENTARY INFORMATION:** These proposed amendments, which would increase the National Flood Insurance Program (NFIP) chargeable (subsidized) rates, are the result of an ongoing review and reappraisal of the NFIP and of continuing efforts to maintain a business-like approach to its administration by emulating successful property insurance programs in the private sector and, at the same time, to achieve greater administrative and fiscal effectiveness in its operation. The proposed amendments are intended to help the NFIP satisfy the premium requirements for the historical average



loss year and to reduce the general taxpayer's burden with a more equitable sharing of the costs of flood losses between the general taxpayers and the insureds. Coverage changes and optional deductibles, in addition to rate increases, are part of the ongoing effort to achieve these goals.

The chargeable (subsidized) rates, for which an increase is being proposed, are the rates applicable to structures located in communities participating in the Emergency Program of the NFIP and to certain structures in communities in the Regular Program. They are countrywide rates for two broad building type classifications which, when applied to the amount of insurance purchased and added to the expense constant, produce a premium income somewhat less than the expense and loss payments incurred on the flood insurance policies issued on that basis. The funds needed to supplement the inadequate premium income are provided by the National Flood Insurance Fund. The subsidized rates are promulgated by the Administrator for use under the Emergency Program (added to the NFIP by the Congress in section 408 of the Housing and Urban Development Act of 1969) and for the use in the Regular Program on construction or substantial improvement started before December 31, 1974 (this additional grandfathering was added to the NFIP by Congress in section 103 of the Flood Disaster Protection Act of 1973) or the effective date of the initial Flood Insurance Rate Map (FIRM), whichever is later. From 1978 through 1984, these rates produced an average premium earned per policy for policies using these rates of \$129, while losses and expenses for these policies amounted to \$212 per policy. This translates to an average subsidy provided annually by the general taxpayer to each subsidized policyholder of \$83.

The statutory mandate to establish reasonable chargeable rates requires the Federal Insurance Administrator to balance the need for providing reasonable rates to encourage potential insureds to purchase flood insurance with the requirement that the NFIP be a flexible program which minimizes cost and distributes burdens equitably among those who will be protected by flood insurance and the general public. The Federal Insurance Administration (FIA) has examined the current chargeable rates and the amount of subsidy required to supplement the inadequate premium income derived from insurance policies to which these rates apply. Based on this examination, FIA has determined that the general

public continues to bear too great a share of the burden for subsidized insurance rates. In addition, FIA has determined that it is necessary to bring NFIP closer to a self-supporting basis and create a sounder financial basis for the program. Therefore, to meet these needs, FIA proposes to increase the chargeable or subsidized rates as follows:

Type of structure	Rates per year per \$100 coverage on—	
	Structure	Contents
(1) Residential.....	\$0.55	\$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration).....	.65	1.30

For comparison, the current subsidized rates are as follows:

Type of structure	Rates per year per \$100 coverage on—	
	Structure	Contents
(1) Residential.....	\$0.45	\$0.55
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration).....	.55	1.10

The need for the proposed increase has been balanced with the statutory requirement that the chargeable rates be consistent with the objective of making flood insurance available where necessary at reasonable rates so as to encourage prospective insureds to purchase flood insurance. Although insureds will be required to pay more for flood insurance coverage for existing structures subject to the chargeable rates and for new structures in Emergency Program communities, this proposed increase is only the third increase in the chargeable rates over the 17 years since the Emergency Program was added to the NFIP. The rate increase will only amount to an average of about \$3.00 per month for policies using these rates, and FIA has determined that the premium payments for policies purchased or renewed, to which the new rates are applicable, will be reasonable as required by statute.

The amount of the proposed rate increase represents a balance between the need for decreasing the federal subsidy, thus more equitably distributing the burden, and the objective of encouraging the purchase of flood insurance.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule does not have a significant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket

file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

The rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that the proposed rule does not contain a collection of information requirements as described in section 3504(h) of the Paperwork Reduction Act.

#### List of Subjects in 44 CFR Part 61

##### Flood insurance

Accordingly, Subchapter B of Chapter I of Title 44 is proposed to be amended as follows:

#### PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

2. Section 61.9 is revised to read as follows:

##### § 61.9 Establishment of chargeable rates.

(a) Pursuant to section 1308 of the Act, chargeable rates per year per \$100 of flood insurance are established as follows for all areas designated by the Administrator under Part 64 of this subchapter for the offering of flood insurance.

##### RATES FOR NEW AND RENEWAL POLICIES

Type of structure	Rates per year per \$100 coverage on—	
	Structure	Contents
(1) Residential.....	\$0.55	\$0.65
(2) All other (including hotels and motels with normal occupancy of less than 6 months in duration).....	.65	1.30

(b) The contents rate shall be based upon the use of the individual premises for which contents coverage is purchased.

Dated: April 7, 1986.

Jeffrey S. Bragg,

Federal Insurance Administrator.

[FR Doc. 86-7961 Filed 4-9-86; 8:45 am]

BILLING CODE 6718-05-M



## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 23

Endangered Species Convention;  
Proposed Revision of Implementing  
Regulations

**AGENCY:** Fish and Wildlife Service,  
Interior.

**ACTION:** Supplemental notice of  
proposed rulemaking.

**SUMMARY:** The Service proposes to amend §§ 23.13, 23.14 and 23.15 of 50 CFR Part 23, the regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to incorporate certain recommendations of the fifth meeting of the Conference of the Parties to the Convention relating to the requirements for importation of ranched wildlife specimens, the time validity of import permits for Appendix I specimens and the definition of the so-called "pre-Convention exemption." The Service also corrects certain sections of the proposed rule published in the Federal Register of September 24, 1985 (50 FR 38683). These corrections are mainly made to accommodate the changes proposed herein.

**DATES:** Comments from the public must be received by June 9, 1986 to be assured consideration. Comments from the public on the proposed rule published on September 24, 1985 (50 FR 38683 et seq.), are reopened to June 9, 1986.

**ADDRESS:** Comments on this proposed rule should be sent to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201. All comments and other materials received in response to this proposal will be available for public inspection during normal working hours at the Federal Wildlife Permit Office, 1000 North Glebe Road, Room 620, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Robinson, Acting Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, telephone (703) 235-2418.

**SUPPLEMENTARY INFORMATION:** The Convention on International Trade in Endangered Species of Wild Fauna and Flora, T.I.A.S. 8249, hereinafter referred to as "CITES" or "the Convention," establishes rules for trade (export, re-export, import or introduction from the sea) of species named in three CITES appendices.

The regulations implementing CITES have been in effect without substantial modification to those sections governing trade requirements (Subparts A and B) since the initial set of regulations was promulgated on February 22, 1977 (42 FR 10465).

CITES provides for meetings of the conference of the Parties at least once every 2 years to discuss and act upon various issues. On September 24, 1985, the Service published a Federal Register notice of proposed rulemaking (50 FR 38683) to revise Subpart A and B of 50 CFR Part 23, the regulations implementing CITES, in order to incorporate certain recommendations of the second, third and fourth meetings of the Conference of the Parties and to make certain technical amendments. In that notice the Service stated that it is "... preparing a separate notice of proposed rulemaking to deal with recommendations made at the recent fifth meeting of the Conference of the Parties held in Buenos Aires, Argentina (April 22-May 3, 1985 . . ." and that in the notice "... the Service will propose further amendment to 50 CFR Part 23 based on those recommendations . . . ." This is such notice.

The Service proposed to amend 50 CFR Part 23, § 23.13, 23.14 and 23.15, to incorporate those recommendations of the fifth meeting of the Conference of the Parties ("COP5") relating to the requirements for importation of ranched wildlife specimens, the time validity of import permits for Appendix I specimens and the definition of the so-called "pre-Convention exemption." The Background to the issues underlying these proposed changes, including copies of the resolutions adopted at COP5, may be found in the Report of the U.S. Delegation to the Fifth Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. A notice of the availability of this report was published in the Federal Register on January 10, 1985 (51 FR 1306).

Some of the changes proposed herein not only affect sections of the current regulations, but also the changes proposed thereto that were published in the Federal Register of September 24, 1985. In such cases, this proposed rule also corrects the proposed rule of September 24, 1985.

**Importation of Ranched Specimens**

Article III of CITES disallows primarily commercial trade of wildlife and plants listed in Appendix I. COP3 and plants listed in Appendix I. COP3 and COP5 resolutions (documents Conf. populations of Appendix I species could

be "downlisted" to Appendix II, and thereby become eligible for commercial trade, if the Party proposing such downlisting provides assurances that such trade would enhance the wild population, that such population could tolerate commercial trade and that other populations would not be jeopardized by such trade.

At COP5, the Parties adopted, as an additional precaution, a resolution prepared and submitted by the United States (document Conf. 5.16) that would require all ranching proposals to contain a detailed marking scheme which conformed with a general scheme contained in the resolution. The general scheme requires all products of ranching operations and/or packages containing such products to bear an indelible mark which conforms to a minimum standard consisting of a two-letter country code, a unique identification number and the year of production, or, if in stock at the time of the proposal, the year the proposal was submitted to the COP for consideration. These marks, if rendered illegible in later processing in another country, would have to be replaced before re-export is allowed. The resolution also recommended that permits and certificates for export or re-export of products from approved ranching operations contain the name of the country of origin in which the ranching operation is located and a reference to the mark on the product or its container.

The United States does not have any approved ranching operation within its jurisdiction. Therefore, the Service does not propose at this time to amend the regulations to require that exports from the United States from ranching operations be properly marked.

However, products from approved ranching operations in foreign party countries may be imported into the United States and may also be subsequently processed and re-exported. Note that such trade may be prohibited under other Federal statutes and regulations such as the Endangered Species Act. These items should be appropriately marked in order to avoid refusal of clearance on import. Section 14.53 of 50 CFR Part 14 provides for refusal of clearance of imports when there are reasonable grounds to believe that the correct identity of the wildlife has not been established (in such cases, the burden is upon the owner, importer or consignee to establish the identity). If the items do not bear authentic marks that meet the minimum standard mentioned above, the Service will consider that their identity has not been



correctly established and clearance will be refused.

If products from an approved ranching operation to be re-exported from the United States contain the marks that satisfied the Service's import clearance procedures, no new mark would need to be affixed to the products or containers. Current Section 23.25(c)(3) requires that applicants for permits and certificates must include a description of the subject wildlife or plants. Proposed § 23.15(c)(3) clarifying this requirements (see 50 FR 38695) would require, among other things, that applicants for re-export certificates provide in their applications a description of any distinguishing feature, including any mark affixed thereto. Therefore, applicants for U.S. re-export certificates to re-export products from approved ranching operations must provide the Service with a description of all of the marks that appeared on the products and/or containers at the time of import whether or not they have been rendered illegible in processing.

Current and proposed (see 50 FR 38696) §§ 23.15(e)(2) provide that the Service may require as a permit or certificate condition that an identifying mark be affixed upon any wildlife or plant. If the marks on products or containers from an approved ranching operation have been obliterated by processing in the United States, the Service will require that the wildlife or containers be indelibly marked as prescribed by the Service. The prescribed mark will be stated on the re-export certificate as a special condition.

The resolution also provides that export permits and re-export certificates for products from approved ranching operations be accepted only if they state the country for origin and only if they contain references to the identifying marks on such wildlife and/or containers thereof. This recommendation will be implemented by other Parties. It should facilitate tracking of shipments of wildlife from approved ranching operations, make it more difficult for wrongdoers to trade commercially in specimens from populations not so approved, make it more difficult for wrongdoers to reuse documents, and provide more reliable data to enable the Parties to determine whether an approved ranching operation is being operated under the terms of its initial approval and the ranching resolution. The Service, therefore, proposes to amend § 23.14 by adding a new paragraph (c) which would require that foreign CITES export permits and re-export certificates for import of wildlife from approved ranching

operations contain the name of the country in which the approved ranching operation is located and a reference to the above-mentioned mark that should be on the product or its container. Such reference would have to correspond with the mark on the product or container.

Because other countries will be implementing the resolution, and in order for the United States to meet its obligations under CITES and to enhance its implementation, re-exports from the United States of products from an approved ranching operation shall be appropriately marked and documents issued for such re-exports shall contain the name of the country of origin in which the approved ranching operation is located and contain a reference to such mark. The names of those countries with approved ranching operations for specified species are set forth in § 23.23 of Subpart C of the regulations.

The resolution would also limit trade in products from approved ranching operations to Party countries. Debate at COP5 indicates the Parties believed that in case of trade in ranching wildlife more rigid controls were needed to assure that other more endangered populations of the same species were not being endangered by such trade.

The Service proposes to amend § 23.11 by adding a prohibition against trade in specimens from approved ranching operations with countries that are not party to the Convention or with Parties that have taken a reservation with regard to the species to which the ranching wildlife belongs.

#### Time Validity of Import Permits

Article III, paragraphs 2 and 4 provide that an export permit may be granted by a Management Authority for an Appendix I species only if it is satisfied that an import permit has been granted for the specimen. This requirement is reflected in current § 23.15(d)(5) and is repeated exactly in proposed § 23.15(d)(13) (see 50 FR 38696) as an issuance criterion for an export permit or re-export certificate for Appendix I wildlife or plants.

The Parties at COP5 adopted a resolution (document Conf. 5.7) recommending that import permits be recognized as valid for purposes of issuing an export permit or re-export certificate only if presented to the Management Authority within 12 months from the date on which the import permit was granted. After expiration of the 12-month period, the import permit, according to the resolution, should be considered void and of no legal value whatsoever. The main purpose of this recommendation is

to assure that when issuance of the export permit or re-export certificate is being considered the information which formed the basis for issuing the import permit was still valid. Obviously, the more time that passes, the more likely that such information would no longer be correct.

Accordingly, the Service proposes to amend current § 23.15(d)(5) (which will appear in exactly the same form in proposed Section 23.15(d)(13) (see 50 FR 38696)) by adding language to the issuance criteria for Appendix I export permits and re-export certificates that would require import permits to be submitted to the Director within a period of 12 months from the date granted (see proposed § 23.15(d)(13) herein). This requirement would also apply to documents comparable to import permits issued by authorities of countries not party to CITES.

Current § 23.15(f) provides, in part, that the duration of CITES permits or certificates (with the exception of export permits) shall be designated on the face of the certificate. This remains unchanged in proposed § 23.14(f) (see 50 FR 38697). As a matter of practice, the Service has been issuing CITES import permits for Appendix I wildlife and plants that expire 12 months after the date granted and would continue to do so under the revised rule.

#### Pre-Convention Exemption

CITES Article VII, paragraph 2, provides an exemption from the strict requirements of Articles III, IV and V for specimens acquired before the provisions of the Convention applied to them.

COP5 passed a resolution (document Conf. 5.11) which defines the word "acquired" for purposes of Article VII, paragraph 2, to mean the date of initial removal of whole live or dead wildlife or plants from their habitat. For parts and derivatives "acquired" is defined by the resolution to mean the date of their initial removal from their habitat or the date of their introduction into personal possession, "whichever date is the earliest." The drafters of the resolution used the words "introduction into personal possession" to cover instances when a part of an animal or plant is found apart from the whole animal or plant from which it came. For example, a tusk separated from an elephant could be picked up in elephant habitat by a person. While one would not say the tusk was removed from its habitat, it was introduced into personal possession at that time. While the resolution does not define acquired in terms of artificially produced wildlife or plants,



the concept of introduction into personal possession seems more appropriate in this case than removal from the habitat.

The words "whichever date is the earliest" were used to denote the first time that the specimen was introduced into personal possession and to exclude from the meaning of the word "acquired" any subsequent transfers of the specimen.

The resolution also provides that "... a Management Authority of an importing country only recognize a pre-Convention certificate issued by another Party state if the date of acquisition of the specimen is anterior to the date at which the Convention entered into force in the country of import for the specimen concerned. . . ." This import measure was designed to prevent prospective members of CITES from establishing stocks of Appendix I specimens and then, by becoming members of CITES, forcing other Parties to accept their commercial trade under pre-Convention certificates.

Although this import measure is not expressly provided for in the provisions of CITES, Article XIV, paragraph 1, provides that CITES shall in no way affect the right of Parties to adopt stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens . . . or the complete prohibition thereof. . . ."

The Service believes that the interests of the Convention and of the species would be promoted by the implementation of these interpretations of the pre-Convention exemption. Therefore, under authority of the Endangered Species Act, the Service proposes to amend current § 23.13(c) and corrects proposed § 23.13(c) to incorporate the aforementioned "import measures" into the regulations. The Service also proposes to amend current paragraphs (c)(8) and (d)(8) of Section 23.15 application requirements and permit issuance criteria, respectively, and correct corresponding paragraphs (c)(10) and (d)(14) of proposed § 23.15 to incorporate the resolution's interpretation of the word "acquired." Note that paragraph 23.15(d)(14)(iii) as here proposed includes as a correction the word "frozen" which in the proposed rule mistakenly reads "foreign" (see 50 FR 38696).

The Service also corrects proposed § 23.14(a)(1) by adding subparagraph (x) which would require that pre-Convention certificates issued by foreign countries contain the date the subject specimens were acquired or a certification that acquisition occurred before a specified date. This amendment

will enable the Service to implement the above-mentioned import measures.

#### Primarily Commercial Purposes

Article III, paragraphs 3 and 5 provide, in part, that permits for importation and introduction from the sea of Appendix I species may be granted if the wildlife or plant "is not to be used for primarily commercial purposes."

At COP5, the Parties adopted a resolution (document Conf. 5.10) which, among other things, provides that the commercial nature of the transaction that accomplishes the transfer of the specimen from the country of export to the country of import is not conclusive when determining if the specimen is not to be used for commercial purposes. Note, however, that this information may be considered in determining whether transfer of the specimens would be detrimental to the survival of the species concerned under Article IV, paragraphs 2, 3 and 5.

The Service has been interpreting this "commerciality test" in the manner provided in the resolution and does not believe it necessary to amend the current regulations in this regard.

#### Effects of Reservations

In the notice of September 24, 1985, the Service proposed to incorporate a recommendation of COP4 (document Conf. 4.25) which addresses how a reserving Party should regard an Appendix I species on which it has taken a reservation when trading with another reserving Party or a non-party (see 50 FR 38689 and 38697).

The notice, in the regulatory text, also stated that the United States shall treat as Appendix I species traded with another party that has taken a reservation with regard to such species. The preamble failed to make explicit the basis for such treatment. The notice also did not explain how the United States would treat species in Appendix I to which it had taken a reservation if trade is with a nonreserving Party.

Article XV of CITES provides that the reserving Party shall be treated as a State not a party to CITES in respect to trade in the species concerned. Article X provides that Parties may trade with non-parties on the basis of comparable documentation that substantially conforms to CITES requirements (see also document Conf. 3.8). Thus, if the United States trades an Appendix I species with a reserving Party, the United States must treat the species as in Appendix I and treat the reserving Party as a non-party and require it to provide substantially conforming

comparable Appendix I documentation under Article III of CITES.

In the reverse situation, that is if the United States takes a reservation with regard to an Appendix I species and trade is with a nonreserving Party, trade would be on an Appendix I basis, as it should, if the nonreserving Party observes and enforces the particularly strict requirements of CITES.

The Service proposes to amend proposed Section 23.23(e) (see page 38697 of the September 24, 1985 notice) by adding language to identify United States' obligations in dealing with nonreserving Parties.

**Note.**—The Department of the Interior has determined that this document is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because no significant burden will be added to the already required paper flow, and similar requirements have or will be imposed by other Party countries with which such entities conduct their business. The Service has determined that these proposed regulations are categorically excluded from further National Environmental Policy Act (NEPA) requirements. Part 516 of the Departmental Manual, Chapter 6 Appendix I, section A(1) categorically excludes changes or amendments to an approved action when such changes have no potential for causing substantial environmental impact.

#### Paperwork Reduction Act

No changes to the burden on affected individuals will be made in the information collection requirements contained in §§ 23.12, 23.13, 23.14 and 23.15, which requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0022.

#### Extension of Period for Comments from the Public

Since the Service intends to publish a final rule that combines this proposed rule and the proposed rule of September 24, 1985, and since several sections in the proposed rule of September 24, have been amended by this proposal, the Service hereby reopens the period for public comment for the proposed rule of September 24, to coincide with the close of the comment for this proposed rule.

#### List of Subjects in 50 CFR Part 23

Wildlife, Imports, Exports, Plants (Agriculture), Endangered and threatened wildlife, Endangered and threatened Plants, Animals, Fish, Transportation, Marine mammals, Forests and forest products, Foreign officials, Treaties, Foreign trade.



## Proposed Regulations

## PART 23—[AMENDED]

For the reasons set forth in the preamble, it is proposed that Part 23, Subchapter B, Chapter I of Title 50, Code of Federal Regulations, be amended as follows:

1. As proposed at 50 FR 38692, the authority citation for Part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249; and Endangered Species Act of 1973, Pub. L. 93-205, 87 Stat. 884; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1141 [16 U.S.C. 1531, *et seq.*].

2. Amend § 23.11 by adding new paragraph (f) to read as follows:

## § 23.11 Prohibitions.

(f) *Ranched wildlife.* With regard to wildlife originating in an approved ranching operation, it is unlawful to import such wildlife from, or export or re-export such wildlife to, a party that has entered a reservation affecting such wildlife or a country that is not party to the Convention.

3. Revise paragraph (c) of § 23.13 to read as follows:

## § 23.13 Exceptions.

(c) The prohibitions in § 23.11(b) through (d) concerning importation, exportation and re-exportation shall not apply to wildlife or plants when a certificate has been issued by the management authority of the country of origin or the country of re-export to the effect that the wildlife or plant was acquired prior to the date the Convention applied to the applicable date that the species of wildlife or plant was first listed in § 23.23 of Subpart C of this Part 23. See § 23.15 for rules on the issuance of such certificates.

4. Section 23.14 as proposed at 50 FR 38694 is amended by adding a paragraph (a)(1)(x) and by adding a paragraph (c) to read as follows:

## § 23.14 Foreign documentation

(a)(1) \* \* \*  
(x) if a pre-Convention certificate, contain the date the wildlife or plant was removed from its habitat or first introduced into personal possession or contain a certification that such removal or introduction occurred before a specified date.

(c) *Approved ranching operations.* Export permits and re-export certificates for wildlife originating in an approved

ranching operation shall contain the name of the country of origin in which the approved ranching operation is located and a reference to the mark placed on such wildlife or its container. (See § 23.23 for the names of countries with approved ranching operations.)

5. Revise paragraphs (c)(10) and (d)(13) and (14) of § 23.15 as proposed at 50 FR 38695-38696 to read as follows:

## § 23.15 Permits and certificates.

(c) \* \* \*  
(10) In the case of applications for certificates of exception, copies of documents, sworn affidavits, breeding records, or similar evidence showing that either (i) the wildlife or plant was removed from its habitat or first introduced into personal possession prior to the applicable date that the species was first listed in § 23.23 of Subpart C of this Part 23, or (ii) the wildlife or plant was bred in captivity or artificially propagated, or was a part thereof or derived therefrom, and in the case of wildlife or plants listed in Appendix I, all of the purposes for which they were bred in captivity or artificially propagated, or (iii) the wildlife or plant, recorded as having been acquired by the sending institution, is a herbarium specimen, other preserved (including frozen), dried or embedded museum specimen, or live plant material to be imported, exported or re-exported as a noncommercial loan, donation or exchange between scientific institutions registered by management authorities or, in the case of a country not party to the Convention, by the authority mentioned in § 23.14(a), which maintain collections that are permanently and centrally housed, professionally curated, acquired primarily for purposes of publishable research, accessible to all qualified users, prepared and arranged to ensure their utility, with permanent and accurate records, including records of loans, donations, and exchanges, and, with regard to wildlife or plants listed in Appendix I, are recorded and managed in a manner to preclude use for decoration, trophies or other purposes incompatible with the principles of the Convention; and whose acquisition and possession are in accordance with the laws of the state in which the institution is located.

(d) \* \* \*  
(13) Whether an import permit has been granted by a foreign country and submitted to the Director no later than 12 months from the date it was granted,

in the case of proposed export or re-export from the United States of any wildlife or plant listed in Appendix I;

(14) Whether the evidence submitted is sufficient to justify an exception, in case of (i) wildlife or plants that were removed from their habitat or first introduced into personal possession prior to the applicable date that the species was listed in § 23.23 of Subpart C of this Part 23; (ii) wildlife or plants that were bred in captivity or artificially propagated; or (iii) wildlife or plants recorded as having been acquired by the sending institution that are herbarium specimens, other preserved (including frozen), dried or embedded museum specimens, or live plant material to be imported, exported or re-exported as a noncommercial loan, donation or exchange between scientific institutions registered by management authorities or, in the case of a country not party to the Convention, by the authority mentioned in § 23.14(a), which maintain collections that are permanently and centrally housed, professionally curated, acquired primarily for purposes of publishable research, accessible to all qualified users, prepared and arranged to ensure their utility, with permanent and accurate records, including records of loans, donations, and exchanges, and, with regard to wildlife or plants listed in Appendix I, are recorded and managed incompatible with the principles of the Convention; and whose acquisition and possession are in accordance with the laws of the state in which the institution is located.

6. Revise paragraph (e) of § 23.23 at 50 FR 38697 to read as follows:

## § 23.23 Species listed in Appendices I, II and III.

(e) Species in Appendix I to which the United States has taken a reservation shall be treated as in Appendix II if import, export or re-export involves a country not party to the Convention or another reserving Party. Such species are treated as in Appendix I if import, export or re-export involves a nonreserving Party. Species in Appendix I to which another Party has taken a reservation shall be treated as in Appendix I. See § 23.4 of this part for information concerning reservations taken by Parties.

Dated: March 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7786 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M



# Notices

Federal Register

Vol. 51, No. 69

Thursday, April 10, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF COMMERCE

### Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: International Import Certificate  
Form number: Agency—ITA—645P;  
OMB—0625-0064

Type of request: Extension of the expiration date of a currently approved collection

Burden: 32,000 respondents; 8,533 reporting/recordkeeping hours

Needs and uses: This collection of information is the certification of the U.S. importer to the U.S. government that he/she will import specific commodities into the U.S. and will not reexport such commodities except in accordance with U.S. export regulations.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Application for Transfer of License to Another Party

Form number: Agency—EAR 372.13;  
OMB—N/A

Type of request: Existing collection in use without an OMB control number  
Burden: 150 respondents; 141 reporting/recordkeeping hours

Needs and uses: This collection of information is used to approve the transfer of outstanding validated export licenses from the original license to another party. Information

will be used to assure continued compliance with export requirements.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Disclosure to Foreign Consignee  
Form number: Agency—EAR 374.4;  
OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 1,000 respondents; 267 reporting/recordkeeping hours

Needs and uses: When a party (other than the party who has U.S. goods overseas) has been granted approval to reexport a previously approved export to a third destination, the party shall advise the original foreign consignee of the amount of reexport authorized and the name of the person or firm to whom the reexport has been authorized. This disclosure of information may later be used in investigations of alleged export violations.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Quarterly Report of the Loan or Sale of Aircraft Equipment Parts, Accessories, and Components by Airlines

Form number: Agency—EAR 376.8(B);  
OMB—N/A

Type of request: Existing collection in use without an OMB control number  
Burden: 100 respondents; 107 reporting/recordkeeping hours

Needs and uses: Airlines operating abroad that receive commodities from the United States for maintenance, repair or operation of its aircraft, are authorized under the Export Administration regulations to lend or sell such commodities without written authority from the Office of Export Licensing. Reports are required on such transactions and are used as safeguards against diversion.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: Quarterly

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Letter of Inquiry (Nuclear End-Uses)

Form number: Agency—EAR 378.6;  
OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 20 respondents; 6 reporting/recordkeeping hours

Needs and uses: The Export Administration Regulations describe certain activities that are considered nuclear end-uses. Any commodity that may directly or indirectly be used in such activities may not be exported without a validated export license. When and exporter is not sure whether the commodity could be used for nuclear related end-uses, a written statement from the manufacturer is required. The requirement is used to control commodities that are controlled for nuclear non-proliferation reasons.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Reports on Exports and Reexports of Technical Data

Form Number: Agency—EAR 379.6 and EAR 379.8; OMB—N/A

Type of request: Existing collection in use without an OMB control number  
Burden: 40 respondents; 11 reporting/recordkeeping hours

Needs and uses: A statement is required of exporters or reexporters who have used or partially used their export licenses or reexport authorizations for exporting or reexporting technical data. The statement provides information on the disposition of the technical data and is used to insure that U.S. exports go to authorized destinations.



Affected public: Business or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox 395-3785

Agency: International Trade Administration

Title: Report on Unscheduled Unloading

Form number: Agency—EAR 386.5(b); OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 10 respondents; 16 reporting/recordkeeping hours

Needs and uses: This collection is the report required by the carrier exporting controlled goods or technology when it is necessary to unload the cargo at a destination other than that shown on the Shipper's Export Declaration. It is used to insure that U.S. exports go only to appropriate destinations.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Notification of Commercial Invoices/Destination Control Statement

Form number: Agency—EAR 371.22(d); OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 40 respondents; 21 reporting/recordkeeping hours

Needs and uses: Notification by the forwarding agent to the exporter is required when the appropriate destination control statement is not entered on the commercial invoice. The exporter then must provide a written assurance that all other copies of the invoice have been corrected and that any person receiving the invoice has been informed of export restrictions. The purpose of this requirement is to insure that U.S. exports go only to legally authorized destinations.

Affected public: Businesses or other for-profit institutions; small business or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Export of Horses

Form number: Agency—EAR 376.3; OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 1 respondent; 1 reporting hour

Needs and uses: The Department of Commerce requires individual validated licenses to export horses by sea, which is prohibited if for purposes of slaughter. Applicants must provide a statement detailing the purpose for which the horses are being exported.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Export of Petroleum Products from a Foreign-Trade Zone

Form number: Agency—EAR 371.7; OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 1 respondent; 1 reporting hour

Needs and uses: Information is required from exporters of products refined from foreign-origin crude oil in Guam or U.S. foreign-trade zones whenever such products are subject to short supply export restrictions.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: Quarterly

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: General License GATS: Authorization for Non-Return of Aircraft

Form number: Agency—EAR 371.9(c); OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 20 respondent; 11 reporting/recordkeeping hours

Needs and uses: U.S. civil aircraft is a controlled commodity for export purposes and as such requires a validated export license. A General License GATS requires no authorization from the Department of Commerce in those cases where the aircraft departs on a temporary sojourn. When the aircraft has departed the U.S. under the General License GATS, an exporter may request an authorization for non-return of the aircraft or any of its components under certain circumstances.

Affected public: Individuals; state or local governments; businesses or

other for-profit institutions; federal agencies; non-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Recordkeeping Requirements Contained in Export Administration Regulations

Form number: Agency—EAR 368-399; OMB—0625-0104

Type of request: Extension of the expiration date of a currently approved collection

Burden: 541,144 recordkeepers; 61,302 recordkeeping hours

Needs and uses: This recordkeeping is required as an assurance of compliance by exporters of export regulations. The records are required for possible review and inspection by representatives of the International Trade Administration and the U.S. Customs Service. They are used in investigative and enforcement efforts

Affected public: Business or other for-profit institutions; small businesses or organizations.

Frequency: Recordkeeping

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Agency: International Trade Administration

Title: Short Supply (Steel) Petitions

Form number: Agency—N/A; OMB—N/A

Type of request: Existing collection in use without an OMB control number

Burden: 100 respondents; 300 reporting hours

Needs and uses: International trade agreements require the submission of documentation indicating abnormal U.S. supply deficits by companies seeking increases in U.S. import restrictions. The information is used by Commerce to make short supply determinations.

Affected public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's obligation: Required to obtain or retain a benefit

OMB desk officer: Sheri Fox, 395-3785

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, DC 20230.



Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 2, 1986.

Linda Engelmeier,

Management Analyst, Information Management Division, Office of Information Resources Management.

[FR Doc. 86-8009 Filed 4-9-86; 8:45 am]

BILLING CODE 3510-CW-M

## Foreign-Trade Zones Board

[Docket No. 12-86]

### Proposed Foreign-Trade Zone, Lawrence County, IL; Including Auto Parts Subzone for Hella North America, Inc., Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Bi-State Authority, Lawrence-Vincennes Municipal Airport, a public corporation of the States of Illinois and Indiana, requesting authority to establish a general-purpose foreign-trade zone in Lawrence County, Illinois, adjacent to the Owensboro-Evansville Customs port of entry, and a special-purpose subzone for the auto components manufacturing operations of North American Lighting, Inc., and Hella Electronics, Inc., both subsidiaries of Hella North America, Inc., in Clay County, Illinois. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 1, 1986. The applicant is authorized to make this proposal under House Bill No. 472 of the 82nd General Assembly, State of Illinois, approved July 24, 1981.

The proposed general-purpose zone would cover 43 acres within the 3000-acre Lawrenceville-Vincennes Airport/Industrial Park Complex on Route 4 in Lawrence County, Illinois. Owned and operated by the Bi-State Authority, the facility has an existing warehouse building and open space for firms needing to construct their own facilities.

The application contains evidence of the need for zone services in the Lawrenceville-Vincennes area. Several firms have indicated an interest in using the general-purpose zone for warehousing products such as auto components, electronic safety devices, communication equipment, electric motors, and glass. No specific manufacturing approvals are being

sought at this time. Such requests would be made to the Board on a case-by-case basis.

The proposed subzone for the auto parts manufacturing operations is located in Clay County on a 13.2-acre site at No. 20 Flora Industrial Park, adjacent to Highways 45 and 50 in Clay County. The North American Lighting subsidiary produces automobile head and tail lamps, warning lights and illumination systems. Production involves plastic parts molding and assembly. Some 40 percent of the materials used are sourced abroad, such as glass lenses and metal stampings. Hella Electronics assembles auto electro-mechanical and electronic control units. Some 60 percent of the parts are sourced abroad, such as electronic components and relays. Both firms ship their products to domestic auto assembly plants.

Zone procedures will allow the subzone companies to avoid duties on the foreign parts used in their exports. On their shipments to domestic auto assembly plants with subzone status, they will be able to take advantage of the same duty rate available to importers of complete automobiles and parts shipped to auto assembly subzones, which is 2.6 percent. The duty rates on the parts used by the companies range from 1 to 6 percent. The savings from zone procedures will help the companies compete with overseas producers of finished auto parts. These efforts are related to the cost-containment strategies of the domestic auto industry.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Theodore A. Galantowicz, District Director, U.S. Customs Service, North Central Region, 120 South Central Ave., St. Louis, MO 63105; and Colonel Dwayne A. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

As part of its investigation, the examiners committee will hold a public hearing on May 14, 1986, beginning at 9:00 a.m., in the Civic Center Chambers of the Lawrenceville City Hall, 700 E. State St., Lawrenceville, IL.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by May 7. Instead of an oral presentation, written

statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through June 13, 1986.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Lawrenceville Industrial Development Office, Courthouse, Lawrenceville, Illinois 62439.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230.

Dated: April 7, 1986.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 86-8028 Filed 4-9-86; 8:45 am]

BILLING CODE 3510-DS-M

## International Trade Administration

[C-549-503]

### Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Rice From Thailand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

**SUMMARY:** We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to producers or exporters in Thailand of rice. The estimated net bounty or grant is 0.75 percent *ad valorem*. However, we are taking into account several program-wide changes which occurred prior to the preliminary determination, and we are adjusting the duty deposit rate accordingly. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of rice from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit on entries of this product in the amount equal to 0.82 percent *ad valorem*.

**EFFECTIVE DATE:** April 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Loc. T. Nguyen or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., DC 20230, telephone: (202) 377-0167 or (202) 377-2830.



## SUPPLEMENTARY INFORMATION:

## Final Determination and Order

Based on our investigation, we determine that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Thailand of rice. The following programs are found to confer bounties or grants:

- Export Packing and Stocking Credits;
- Price Support and Stabilization Program;
- Paddy Rice Mortgage Program; and
- Supplementary Program to Implement the Government's Rice Policy—Preferential Financing to Rice Millers.

We determine the estimated net bounty or grant for the review period to be 0.75 percent *ad valorem* for all producers or exporters in Thailand of rice. However, we are adjusting the duty deposit rate to reflect several program-wide changes that occurred prior to our preliminary determination. Thus, the cash deposit rate on entries of this product will be 0.82 percent *ad valorem*.

## Case History

On September 24, 1985, we received a petition from the Rice Millers' Association on behalf of the U.S. rice industry. In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the petition alleges that producers or exporters in Thailand of rice receive, directly or indirectly, benefits which constitute bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation and, on October 15, 1985, we initiated such an investigation (50 FR 42581). We stated that we expected to issue our preliminary determination on or before December 18, 1985.

On November 29, 1985, we determined this investigation to be "extraordinarily complicated" as defined in section 703(c)(1)(B) of the Act. Therefore, we extended the period for making our preliminary determination by 30 days until January 17, 1986.

Since Thailand is not a "country under the Agreement" within the meaning of section 701(b) of the Act and merchandise being investigated is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation. Accordingly, the domestic industry is not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise injure, or

threaten material injury to, a U.S. industry.

On October 24, 1985, we presented a questionnaire to the Embassy of Thailand in Washington, DC, concerning the petitioner's allegations. On December 6, 1985, we received responses to our questionnaire from the government of Thailand and from the companies under investigation. We received a supplementary response from the government of Thailand on December 30, 1985. On the basis of the information contained in these responses, we made our preliminary determination on January 17, 1986 (51 FR 3377). From February 3–20, 1986, we verified the responses submitted by the government of Thailand and by the companies under investigation.

We received amended submissions from the government of Thailand based on our verification on February 27 and March 10, 1986.

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A public hearing was requested by respondents; however, this request was withdrawn by the same party on February 24, 1986. Therefore, we did not hold a public hearing. On March 3, 1986, we received initial briefs from petitioner and respondents and, on March 10, 1986, we received their reply briefs. On March 17, 1986, we received written comments on the verification reports.

## Scope of Investigation

The product covered by this investigation is rice, both milled and unmilled, and includes all varieties of rice. Rice is currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA) under items 130.5000, 130.5600, 130.5800, 131.3000, and 131.3300 according to the type and level of processing.

## Analysis of Programs

Throughout this notice, we refer to certain principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, which was published in the April 26, 1984, issue of the *Federal Register*, (49 FR 18006).

It is the Department's policy to take into account program-wide changes where these are implemented before the preliminary determination, with the result that the rate for cash deposit or bonding purposes is raised or lowered, as appropriate. This policy is desirable

because it promotes the expeditious elimination or curtailment of bounties or grants. The recognition of program-wide changes also permits the Department to adjust the bonding rate to correspond as nearly as possible to the eventual duty liability.

In this investigation, we have discovered that prior to the preliminary determination two new programs and a change in the preferential interest rate of the export packing and stocking credits are instituted, resulting in a fundamental change in the bestowal of benefits. Descriptions of these program-wide changes, and of our treatment of them, follow in section I.A, I.C, and I.D of the notice.

For purposes of this final determination, the period for which we are measuring bounties or grants is calendar year 1984.

## The Upstream Issue

In a letter dated November 1, 1985, the government of Thailand argued that the government's provision of subsidized fertilizer to the Thai rice industry constitutes an "upstream subsidy" under section 771A(a) of the Tariff Act of 1930, as amended, because fertilizer is an "input product" in the production of rice. We disagree. In this case, the government of Thailand is not providing assistance to the producers of fertilizer, but, rather, directly to fertilizer users, among whom are the growers of rice, by acquiring fertilizer for distribution to those users.

On January 6, 1986, and in their briefs, respondents once again brought up the upstream issue, this time arguing that paddy rice is an upstream input of milled rice and that the Department must, therefore, apply the upstream subsidy provisions under section 771A of the Tariff Act of 1930, as amended, to measure the amount of any benefit received by paddy rice growers which is passed through to rice millers. They contend that the factors cited by the Department in support of its preliminary finding—the continuous line of production, the single end product, and the definition of industry by the ITC—are applicable only to injury determinations and that the Department "ignored totally Congressional intent that only subsidies which are passed through from a prior stage product to a final stage product be countervailable." Respondents conclude that if we do apply the upstream subsidy analysis, we will find that no competitive benefit has been bestowed on rice millers as a result of the benefits bestowed on rice growers.



We disagree with respondents that section 771A governs this case. In a case concerning an agricultural product such as this, it is inappropriate to term the raw product an "input" into the next-stage or further processed product. As stated in the *Final Affirmative Countervailing Duty Determination: Live Swine and Fresh, Chilled and Frozen Pork Products from Canada* (50 FR 25097), an important criterion is the degree to which the demand for the prior stage product is dependent on the demand for the latter stage product. The primary, if not the sole, purpose of all segments of the industry in this case is to produce a single end product—milled rice. Almost all of the raw agricultural product, paddy or unmilled rice, is dedicated to the production of milled rice. There is a single, continuous line of production from paddy rice to milled rice.

As for respondents' argument that our analysis of the upstream subsidy provisions ignored Congressional intent, we disagree. As the legislative history of the upstream subsidy provisions indicates, Congress intended that they generally codify our past practices. In *Live Swine*, we stated that our practice in prior cases has been to find subsidies on the raw agricultural product as well as on the final stage product [See *Lamb Meat from New Zealand: Preliminary Affirmative Countervailing Duty Determination*, 46 FR 58123 (1981) and *Certain Fish from Canada: Final Countervailing Duty Determination*, 43 FR 25996 (1978)]. Because Congress intended that the upstream subsidy provisions codify our prior practice, we conclude that Congress did not intend that we alter our practice in situations similar to those arising in the previously cited agricultural investigations.

Consequently, we determine that our interpretation of the upstream subsidy provisions is not contrary to Congressional intent and that paddy rice, or unmilled rice, is not an "input" of milled rice. Therefore, the upstream subsidy provisions of the countervailing duty law are not applicable in this case.

Based upon our analysis of the petition, the responses to our questionnaires, our verification, and written comments submitted by interested parties, we determine the following:

#### **I. Programs Determined to Confer Bounties or Grants**

We determine that bounties or grants are being provided to producers or exporters in Thailand of rice under the following programs:

#### **A. Export Packing and Stocking Credits**

Export packing and stocking credits are short-term loans used for either pre-shipment, post-shipment, or stocking financing. These loans are provided through commercial banks and are then rediscounted at the Bank of Thailand through its export refinancing facility. Under the "Regulations Governing the Rediscount of Promissory Notes Arising from Exports" (Buddist Era [B.E.] 2514), the commercial banks, during the period for which we are measuring bounties and grants, charged the borrower a maximum of seven percent interest per annum, raising this to nine percent interest per annum in October 1984. The commercial bank then rediscounts these loans at five to seven percent interest with the Bank of Thailand. These loans are provided in baht for up to 180 days, depending on the type of financing used. Stocking credit financing includes an unrefunded penalty of 11 percent, retroactive to the issuance of the loan, for loans which are outstanding after the 150 day maximum term allowed for this type of financing.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. As specified in the Subsidies Appendix, we used the most appropriate national average commercial method of short-term financing as the benchmark rate for short-term loans. We verified that the average interest rate charged by commercial banks in 1984 on short-term loans, bills, and overdrafts was 14.39 percent; for 1985, the verified national average interest rate was 14.16 percent. Comparing this average interest rate to the rate charged on export packing and stocking credits, we find that the rate on export packing and stocking credits is preferential. However, with regard to export stocking credits on which the 11 percent penalty was charged and not refunded, the interest rate is not preferential because the addition of the penalty charge to the interest rate of the stocking credit results in a rate that is higher than the commercial benchmark interest rate. Therefore, we included in our calculation all export packing loans and only those export stocking loans for which the penalty was either not charged or which had been refunded, for shipments of rice to the United States. Applying the 1984 average commercial bank interest rate as the benchmark, we calculated an estimated net bounty or grant of 0.66 percent *ad valorem* during the review period. In adjusting the cash deposit rate to reflect the interest rate change in October 1984, the 1984 and 1985 average commercial bank interest

rates were applied as benchmarks to loans taken out during the period of October 31, 1984, through June 30, 1985. On this basis, we calculated an estimated countervailing duty rate of 0.70 percent *ad valorem*.

#### **B. Price Support and Stabilization Program**

The support and stabilization of the price of rice in Thailand is undertaken by two government agencies, the Public Warehouse Organization (PWO) and the Marketing Organization for Farmers (MOF), and one private organization, the Agricultural Cooperative Federation of Thailand (ACFT).

1. We verified that the PWO, chaired by the Minister of Commerce, is charged with carrying out activities concerning rice, agricultural products, and other products, in order to ensure that their quantity, quality, and prices are appropriate and that the supply is sufficient to meet the demand of the state and the public. The PWO can trade for its own account or pursuant to special instructions from the Minister of Commerce. To carry out the price support program, the PWO received funds from the Farmers Assistance Fund (FAF) in the form of loans repayable at an interest rate of 2 percent annually. We verified that as of December 1983, the PWO was suspended from participating in price support activities. Therefore, we determined that the PWO was not involved in the price support and stabilization program in either 1984 or 1985.

2. The MOF operates under the Ministry of Agriculture and Cooperatives with the objective of assisting farmers and farmer's associations by intervening in the market for paddy rice in order to raise the market price for paddy rice during certain periods in the harvest year. We verified that the activities of the MOF are funded by the FAF, and that the MOF has performed similar functions, as necessary, with respect to products other than rice.

3. The ACFT is a private association of farmers operating at the district, provincial, and national levels. Among the objectives of the ACFT are the provision of funds to farmers in return for paddy rice which is then marketed, the provision of fertilizer to farmers financed against paddy production, and the provision of warehouse facilities for rice and fertilizer. We verified that in both 1984 and 1985, the ACFT received working capital loans from the FAF. These were one year loans at two percent interest per annum. The loans were used for the purchase of fertilizer



for sale to farmers and to undertake milling and marketing operations.

Based on our verification we find that, although some agricultural products have benefitted from these programs sporadically, the price support and stabilization programs are not being provided to all agricultural products. Nor do we find indications of any objective, identifiable criteria which would automatically trigger the price support mechanism. As a matter of fact, we verified that price support actions by the government-run organizations are taken only at the special instructions of the Ministry of Commerce or at the discretion of the Ministry of Agriculture.

Therefore, based on our verification, price supports appear to be available only to selected agricultural producers. Moreover, the level of support varies for different commodities at various times, and the availability and level of support is at the discretion of the government. As such, we cannot conclude that these programs are available to more than a specific enterprise or industry, or group of enterprises or industries.

Because the price support and stabilization programs are limited to a specific enterprise or industry, or group of enterprises or industries, we determine that these programs confer bounties or grants on rice farmers. However, we determine that of the two government-run organizations undertaking these programs, only one, the MOF, participated in price support and stabilization for rice during the review period.

To calculate benefits received under the MOF, we took the difference between the average price for rice and the MOF support price for rice in 1984, and multiplied it by the amount of rice the MOF purchased in 1984. This benefit was then divided by the total value of milled rice for 1984, to arrive at an *ad valorem* rate of 0.004 percent.

We also determine that the loans received by the ACFT for use in price support and stabilization for rice are on terms inconsistent with commercial considerations and are, therefore, countervailable. To calculate the benefits received under the ACFT, we took the total amount of loans obtained by ACFT from the FAF in 1984 and multiplied it by the difference between the two percent interest rate and the national average interest rate. The benefits were then divided by the total value of milled rice to arrive at an *ad valorem* rate of 0.09 percent.

#### C. Paddy Rice Mortgage Program

During the review period, this program did not exist. From January 1, 1985, through September 30, 1985, however,

the Bank of Agriculture and Agricultural Cooperatives (BAAC) and the PWO participated in the paddy rice mortgage program. This program allows growers to hold back paddy rice sales in times of depressed seasonal prices until prices recover. The purpose is to provide farmers with income while they hold their paddy rice for sale until a time when they can realize higher prices. We verified that under this program rice farmers can mortgage their rice for a period of five months by storing the paddy rice and then obtaining a loan from the Bank of Agriculture and Agricultural Cooperatives (BAAC) equal to 80 percent of the value of the paddy rice against warehouse receipts. The loans are made at 14 percent interest, with half of the interest being paid by the farmers and half by the FAF. A 15 baht per month storage fee is also charged by the PWO, half of which is paid by the farmers and half by the FAF. In addition, the PWO charges labor, weighing, and insurance costs, all of which are paid by the FAF.

Because the Rice Mortgage Program is limited to a specific enterprise or industry, or group of enterprises or industries, and because the terms of the loans are inconsistent with commercial considerations, we determine that this program confers a bounty or grant. We have included this program in our cash deposit rate for the reasons mentioned earlier in this notice.

To calculate the benefit of the Rice Mortgage Program, we took the total amount of the loans given to rice farmers in 1985 times the difference in the 1985 national average commercial rate of 14.16 percent and the preferential rate of 7 percent (paid by the farmers) times the number of days the loans were outstanding. This benefit was added to the benefits received for labor, weighing, insurance, and rice storage. The total was then divided by the 1985 value of milled rice to arrive at an *ad valorem* rate of 0.02 percent for duty deposit purposes.

#### D. Supplementary Program To Implement the Government's Rice Policy—Preferential Financing to Rice Millers

During the review period, this program did not exist. In 1985, however, the Ministry of Agriculture and Agricultural Cooperatives, in conjunction with eight commercial banks, established a program to provide low interest loans to participating rice millers.

We verified that during the review period 60 percent of the loan amounts to fund this program were given by the FAF at a zero percent interest rate and 40 percent were given by the banks at a

16.5 percent interest rate. Rice millers buying paddy rice from farmers under this program would pay an advance of 80 percent of the total value of the paddy rice based on an administered price set by the government. The rice millers would also provide the farmers with a bank guarantee against the 20 percent of the value not paid at the time of receipt. The millers would then obtain a 90-day loan for 80 percent of the value. In addition, the millers would pay the bank one percent of the guarantee amount.

Because the Supplementary Program is limited to a specific enterprise or industry, or group of enterprises or industries, and because the terms of the loans are inconsistent with commercial considerations, we determine that this program confers a bounty or grant. We have included this program in our cash deposit rate for the reasons mentioned earlier in this notice.

We weighted the amount of loans given by the FAF and by the banks; thus, the actual average interest rate charged was 6.6 percent per annum. To calculate the benefit, we took the difference between the 1985 national average commercial interest rate of 14.16 percent and the preferential rate of 6.6 percent and multiplied it by the total value of the loans, times the number of days the loans were outstanding. This benefit was then divided by the total 1985 value of milled rice to arrive at an *ad valorem* rate of 0.01 percent for duty deposit purposes.

## II. Programs Determined Not To Be Countervailable

### A. Construction of Roads and Irrigation Facilities for Rice Producers

The petitioner alleged that producers and exporters of rice receive benefits through the construction of roads and irrigation facilities targeted to benefit the rice industry. We verified that the rehabilitation and construction of roads to facilitate the transportation of agricultural goods is an obvious concern given the dominant position of agriculture in the Thai economy; however, it is only one of a number of objectives of the Thai government. Furthermore, we verified that road construction in rice growing areas has not been among the principal priorities of any of the highway development plans, because rice is grown predominantly in the lowland areas which are already quite developed. In fact, the emphasis on rural road construction and maintenance has been concentrated in upland areas where crops such as



maize, sugar cane, cassava, jute, and para-rubber are grown.

As for the construction of irrigation facilities, we verified that crops using irrigation in Thailand include rice, sugar, citrus, vegetables, beans, and tobacco, among others.

We have consistently determined that government activities regarding the construction of roads and irrigation facilities constitute a bounty or grant only when they are limited to a specific enterprise or industry, or group of enterprises or industries. Moreover, we have held that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government action does not confer a countervailable bounty or grant. Basic infrastructure facilities are, by their very nature, available for use only by companies and individuals located in the vicinity of such facilities. Roads, ports, and training centers established in a given location obviously benefit those located in that area more than they benefit firms and individuals located in other areas. Nevertheless, this does not mean that those located in close proximity to the infrastructure are receiving countervailable bounties or grants. The provision of basic infrastructure does not confer a countervailable bounty or grant when the following three conditions are met: 1) the government does not limit who can move into the area where the infrastructure has been built; 2) the infrastructure that has been built is used by more than a specific enterprise or industry, or group thereof; and 3) those that locate there have equal access or receive the benefits of the infrastructure on equal terms.

Inasmuch as roads (used by agriculture and others) and irrigation facilities in Thailand are available for use by the agricultural sector as a whole, we determine that this program is not countervailable.

#### *B. MOF Fertilizer Program*

The MOF sells fertilizers to farmers at prices below market prices. The MOF sells four types of fertilizer, two of which are mostly used by rice farmers and two of which are used for other grain and vegetable crops. The types of fertilizer selected depends upon the type of soil and the crop to be grown. We verified that the fertilizer sales program of the MOF is limited to selling fertilizers to farmers certified by provincial officials as poor farmers or farmers whose total land area is 10 rai (approximately 4 acres) or less. In addition, there is a limitation of 500 kg. per farm per crop year. We also verified

that this program is not limited to rice farmers and that all four types of fertilizers are sold to farmers at the same rate of benefit. The fact that there are two types of fertilizer that are used mostly in growing rice is due to the inherent nutrients present in fertilizers and required by the rice plant, not to any activity by the government limiting the benefit to rice farmers. Therefore, we determine that this program is not limited to a specific enterprise or industry, or group of enterprises or industries and is not countervailable.

#### *C. Investment Promotion Act—Section 35*

We verified that the Investment Promotion Act (B.E. 2520) of 1977 provides incentives for investment to promote development of the Thai economy. Administered by the Board of Investment, the Investment Promotion Act authorizes the exemption of and/or reduction of import duties and certain other taxes under sections 35 and 36. Section 35 provides various tax reductions to promoted companies located in investment zones or industrial estates, approved and set up at the direction of the Board according to published criteria. We verified that in order to qualify as a promoted firm a company must fulfill the established industry criteria. We also verified that the number of industries designated as "promoted" industries was over 120 as of September 1985.

Furthermore, we verified that an industrial estate may be located anywhere in Thailand as long as it fulfills certain criteria for infrastructure and other conditions related to industrial activities. Any promoted industry may locate in a designated industrial estate or may have itself designated as an industrial estate, if it meets the required criteria.

Since section 35 is not limited to a specific enterprise or industry, or group of enterprises or industries, and since it is not limited to any specific region in Thailand, we determine that the benefits under section 35 are not countervailable.

#### **III. Programs Determined Not To Be Used**

We determine that the producers or exporters in Thailand of rice did not use the following programs which were listed in our notice of initiation.

##### *A. Export Processing Zones*

In 1979, Export Processing Zones were established through the "Industrial Estates Authority of Thailand Act" (B.E. 2522). We verified that none of the companies responding to our questionnaire is located in the export

processing zones and, thus, none receives benefits under this program.

##### *B. Rediscount of Industrial Bills*

The petitioner alleged that producers and exporters of rice receive preferential financing for raw material purchases through rediscounting of industrial bills. We verified that rice millers and growers are not eligible for this program.

##### *C. Incentives for International Trading Firms*

The petitioner alleged that the Board of Investment (BOI) grants to qualified international trading companies: 1) import duty exemptions and the provision of duty drawback schemes; 2) income tax deductions of 200 percent of foreign marketing expenses; and 3) financial support from the Bank of Thailand, including permission to hold foreign-currency accounts.

We verified that between 1978 and 1980, the BOI granted certain incentives to international trading firms pursuant to the Announcement of the BOI No. 40/2521 (1978). This program was terminated on March 11, 1981, pursuant to the Announcement of the BOI No. 1/2524 (1981). As of this effective date, if a trading company had not already been certified, it was not eligible for certification and could not receive benefits. Only two companies that export rice to the United States are eligible to receive benefits under this program. We verified that neither of the two eligible companies received any benefits during the review period.

We also verified that one company held a Singapore dollar account and one company held a U.S. dollar account during the review period; however, the Singapore dollar account is held by the Singapore branch and thus would confer no benefits on the company in Thailand. There has been no activity in the very small U.S. dollar account held by the second company. Therefore, we find that none of the companies under investigation receives benefits from having foreign currency accounts.

##### *D. Export Promotion Fund*

The petitioner alleged that producers and exporters of rice receive benefits from the Export Promotion Fund, which is administered by the Department of Commercial Relations, aimed at promoting rice exports. We verified that no project related to rice exported to the United States was financed by the fund in 1984 and 1985.



**E. Tax Certificates for Exporters**

The petitioner alleged that producers and exporters of rice receive tax certificates based on the value of their exports, which may be used to pay tax liabilities. We verified that the primary authority for the rebate of indirect taxes is the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act." Section 12 of the Act states that "goods subject to tax and duty or fees when exported" are not eligible for rebates. We also verified that rice was subject to an export tax and an export premium during the review period; therefore, the exporters of rice were not eligible to receive these tax certificates during the review period.

In October 1985, the export tax on rice was lifted and in January 1986, the export premium was also lifted, thus making rice eligible for receipt of tax certificates; however, on March 5, 1986, the government of Thailand ruled that rice exporters cannot receive tax certificates for the export of rice. This decision was permissible under section 13 of the Act.

**F. Electricity Discount for Exporters**

The petitioner alleged that electricity authorities in Thailand provide discounts on electricity rates charged to producers of exported products. We verified that only industries entitled to participate under the Ministry of Finance regulations in the tax certificate program pursuant to the "Tax and Duty Compensation of Exported Goods Produced in the Kingdom Act" are eligible for the electricity discount. Since rice producers and exporters are not entitled to participate in the tax certificate program under the aforementioned Act, they are ineligible for electricity discounts.

**G. Paddy Price Raising Project**

On October 22, 1985, the Council of Economic Ministers approved a new rice policy for the 1985/1986 crop year (December 1, 1985 through November 30, 1986), entitled the "Paddy Price Raising Project." One aspect of this project is to fix a minimum price to be paid by millers for paddy rice delivered to the mill. Another is the provision of below-market rate financing to millers meeting certain stock requirements.

Rice mills intending to participate in the compensatory financing program were required to register by December 1, 1985. Preliminary figures kept by the government of Thailand show that 978 rice mills have registered to participate. The government estimated that about 30-40 percent of those registered will actually qualify for

financing. We verified that this program went into effect on January 26, 1986, and that, as of the date of the verification, no benefit has been given out.

**H. Investment Promotion Act—Section 36**

Section 36 provides various tax and customs duty exemptions to enterprises that export. We verified that producers or exporters of rice did not receive benefits under section 36 during the review period.

**IV. Program that Does not Exist****Exemption of Sales Tax for Promoted Industries**

The petitioner alleged that producers and exporters of rice receive exemptions from sales tax if they qualify for promotion under the Investment Promotion Act. The government of Thailand responded that there is no law providing exemptions from sales tax for "promoted" industries other than the Investment Promotion Act, which is dealt with in the section of this notice entitled "Investment Promotion Act." We found no evidence during verification that contradicts the government's response.

**Petitioner's Comments**

*Comment:* Petitioner contends that the minimum appropriate benchmark for short-term loans is the 17.5 percent rate published by the Bank of Thailand (BOT) and not the average commercial bank interest rate provided by the BOT.

*DOC Position:* The 17.5 percent rate published in the BOT's bulletin is identified as a maximum rate. Thus, it would not be considered as the most appropriate national average benchmark unless the government of Thailand could not provide verifiable statistics on average interest rates. Based on our verification, we consider that the government of Thailand has satisfactorily demonstrated that average actual interest rates are lower than the published maximum rate. Therefore, we are using as the benchmarks the average commercial bank interest rates for 1984 and 1985 that were verified at the BOT.

*Comment 2:* Petitioner argues that the Department should include interest rates charged on loans from financial institutions other than banks in the benchmark. Petitioner contends that, since nearly 20 percent of Thailand's market consists of financing companies and other non-bank institutions, an accurate determination of the national average short-term interest rate must include the average rate charged by non-banks.

**DOC Position:** We disagree.

Established Department practice is to use the most comparable, predominant method of financing as the source for short-term loan benchmarks. Thus, we usually look for a commercial interest rate charged by commercial banks. We are satisfied that the benchmarks we have chosen represent average commercial interest rates for short-term loans.

*Comment 3:* Petitioner contends that we understated the *ad valorem* subsidy margin of certain domestic programs in the preliminary determination by using as the denominator the estimated value of milled rice based on the price of one specific high-grade type of rice, due to the lack of more complete information. Petitioner argues that the Department must allocate the subsidy benefits over the value of all varieties of milled rice.

*DOC Position:* We agree. We now have verified information on the value of all varieties of milled rice. Since we are dealing with aggregate data and these are domestic subsidies that are not segregable to sales of rice to the United States, we will allocate benefits over the value of all milled rice.

*Comment 4:* Petitioner argues that, in calculating benefits for the rice mortgage program, the Department should include the costs for labor, insurance, and weighing, since these costs were entirely paid for by the FAF. In addition, the Department should include the differential between the market storage rate and the storage rate paid by the farmer to the government agencies under the program.

*DOC Position:* We agree that these costs should be included in our calculation. We have no information on the record indicating that the prices charged for such services are below market prices. Therefore, we have used the actual amounts paid by the FAF to the PWO for the costs incurred.

**Respondents' Comments**

*Comment 1:* Respondents argue that the government of Thailand's domestic programs to assist rice farmers should be analyzed under section 771A of the Tariff Act of 1930, as amended, the upstream subsidies provision of the countervailing duty law. They maintain that the Department erred when it concluded in its preliminary determination that paddy rice is not an input into milled rice and, that if section 771A had been applied, we would find that a competitive benefit was not bestowed on milled rice as a result of benefits provided to rice farmers. They argue that our preliminary rejection of an upstream analysis was based on a



"simplistic approach" elaborated in *Live Swine* (*supra*). They claim that our reasoning was not based on the statute and totally ignored Congressional intent that only subsidies which are passed through from a prior stage product to a final stage product are countervailable. Furthermore, they argue that the ITC and the Court of International Trade decisions relating to the definition of industry in injury investigations are not relevant to our decision and that the "special nature of agriculture" to which the *Live Swine* case refers is, in fact, relevant only to an injury determination. In summary, respondents argue that we cannot determine what effect programs for paddy farming have on the exported product, milled rice, unless we analyze whether any benefit is actually passed through to milled rice production. This analysis is properly undertaken through the upstream subsidy provisions of section 771A.

**DOC Position:** We disagree. See the section of the notice entitled "Upstream Issue."

**Comment 2:** Respondents argue that the benchmark should include both loans denominated in baht and foreign currency loans because 1) exporters secure a large percentage of their sales through dollar-denominated letters of credit, which can be financed entirely at dollar interest rates, and 2) the Department verified that three responding companies had short-term dollar loans in 1984 and 1985 at interest rates between 9.375 and 12.5625 percent.

**DOC Position:** We use as our benchmarks for short-term loans the national average commercial interest rates. As stated in the Subsidies Appendix, the benchmark must be applicable to loans denominated in the same currency as the loans under consideration. Thus, it would be inappropriate to include foreign currency loans in our calculation of the benchmark for a baht currency loan program.

**Comment 3:** Respondents argue that the Department should take into account the payment of penalty interest on export packing credits when determining whether the loans provide countervailable benefits.

**DOC Position:** We have done so. See the section entitled "Export Packing and Stocking Credits."

**Comment 4:** As of the end of December, 1983, the Bank of Thailand required recipients of export packing and stocking credits to enter into fixed forward exchange contracts as a condition for receiving the loans. In November, 1984, the government of Thailand devalued the baht. Due to these conditions, the companies

receiving these loans incurred exchange losses on their export shipments. Respondents argue that these exchange losses should be included in the effective interest rate of the export packing and stocking credits.

**DOC Position:** We disagree. The export packing and stocking credits are baht-denominated loans and they are repaid in baht. Neither the loans nor their repayment are in any way tied to the value of the dollar. The recipients did not incur any losses in connection with the repayment of these loans, although they might have received less baht for their export sales due to the devaluation. Therefore, these exchange losses are due to commercial risks taken by the borrower in obtaining loans at a preferential interest rate, and not to a loss of benefits accrued from a government subsidy program. We do not take into account whether the business result would have worked to the advantage or disadvantage of the respondents if they had chosen not to participate in the program.

**Comment 5:** Respondents argue that the Department should take into account changes that have reduced the level of benefit from export packing and stocking credits since the end of 1984. They argue that the Department should adopt either one of two alternative calculations to adjust for the decline in benefits on packing and stocking credits. One, the benefit could be calculated according to the responding companies' usage of loans from January 1984 to June 1985, but at the rate of benefits in 1985. Or two, the Department could calculate the benefit according to the responding companies' usage of loans in 1984, but at the rate of benefit in 1985.

**DOC Position:** We agree that there was a program-wide change in the interest rate starting in October, 1984, and have taken this into consideration in our calculations. (See section entitled "Export Packing and Stocking Credits.") However, we disagree in this case with both alternatives suggested by respondents for calculating the cash deposit rate.

In this case, we have verified information on both the loan usage and the benchmark for the period after the rate change; therefore, we have used these figures to calculate a cash deposit rate.

**Comment 6:** Respondents contend that a government program is not countervailable unless it confers some quantifiable benefit on the product being exported. Since the central objective of the alleged domestic subsidy programs in Thailand is to raise the prices paid for the raw agricultural product by the rice miller and the exporter, the final

processed product, milled rice, does not receive any benefit or special treatment by virtue of these programs.

**DOC Position:** We disagree. Section 771(5)(B) clearly defines a domestic subsidy paid or bestowed, directly or indirectly, in the manufacturing, production, or export of any class of kind of merchandise, as 1) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial consideration; 2) the provision of goods or services at preferential rates; 3) the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry; and 4) the assumption of any costs or expenses of manufacture, production or distribution. Nowhere is there any requirement that the benefit must result in a lowering of the price of the exported product in order for it to be countervailable. It is only in the upstream subsidy provision, which is not applicable in this case, that we must determine whether the subsidy on the "input" product did result in a competitive benefit to the product under investigation.

**Comment 7:** Respondents argue that the MOF price support and stabilization activities in 1984 and 1985 are not countervailable subsidies because they do not result in the product being delivered to the market at a lower price. Respondents cite *Tomato Products from the European Community*, 44 FR 15825 (1979), *Dextrines and Solubles from Corn Starch from the European Community*, 45 FR 18414 (1980), *Live Swine and Fresh, Chilled and Frozen Pork Products from Canada*, 50 FR 25097 (1985), and *Lamb Meat from New Zealand*, 50 FR 37708 (1985), as cases which have involved programs which provided a payment to the producer intended to compensate for the difference between market prices and price support levels. They also cited *Certain Steel Products from Belgium*, 47 FR 39304, 39308 (1982) and *Certain Steel Products from the Federal Republic of Germany*, 47 FR 39332, 39351 (1982).

**DOC Position:** While it is true that in some of the cases cited above the support benefits found to be countervailable have been intended to result or have resulted in lower market prices, the reasons for finding them countervailable are not based on whether these subsidies were intended to lower the prices of the products. As stated above in our response to Respondents' *Comment 6*, the countervailing duty law measures subsidies received, not their effect on prices of the product under investigation. In fact, in *Lamb Meat*, we found countervailable a government



price support program which maintained a price support scheme that set prices for lamb at a higher rate than the market price.

The MOF price support program operates to provide a benefit to the rice farmers through the purchase of paddy rice at above-market prices; therefore, we find that the benefits provided under this program are countervailable. See also *DOC Position to Respondents' Comment 6*.

*Comment 8:* Respondents argue that any analysis of the Thai price support programs necessarily takes place under section 771(5)(B)(ii) of the Act, "the provision of goods and services at preferential rates." They contend that for these programs to be countervailable under this section, they must result in a lowering of the price, and that since this is not the case with respect to these price support programs, they are not countervailable.

*DOC Position:* The price support programs provide benefits in the nature of a grant and thus do not fall under section 771(5)(B)(ii). Also see *DOC Position to Respondents' Comment 7*.

*Comment 9:* Respondents argue that the preferential loans made by FAF to the ACFT are not countervailable since the product in question, paddy rice, is being introduced into the market place through the ACFT program above prevailing market prices. Therefore, milled rice is not being provided to the consumer at preferential rates.

*DOC Position:* We disagree. The loans given by the FAF to the ACFT at two percent are clearly inconsistent with commercial considerations as defined by section 771(5)(B)(i). Whether this results in the product being provided to the final consumer at preferential rates is irrelevant. See *DOC Position to Respondents' Comment 6*.

*Comment 10:* Respondents argue that the sale of fertilizer by the MOF is both *de jure* and *de facto* generally available. In 1985, the sale of fertilizer for specific crops was limited only by whether a farmer of farm group applied to purchase the fertilizer. The variety of fertilizers sold was appropriate for most crops requiring fertilizer in Thailand including rice, maize, mungbeans, cassava, sugarcane, sorghum, soybeans, tapioca, cotton, jute, fruits, vegetables, and flowers. The provision of fertilizer at below market prices had no effect on the paddy rice. Although the lower-costing fertilizers may have increased the return to the farmer, the rice miller purchasing paddy rice at market prices did not benefit at all from the program.

*DOC Position:* We agree with respondents' first argument that the sale of fertilizer by the MOF is not limited to

a specific enterprise or industry, or group enterprises or industries; therefore, we find this program not countervailable. With respect to respondents' second argument. See *DOC Position to Respondents' Comment 6*.

*Comment 11:* Respondents argue that the paddy mortgage program is not countervailable because any benefit which might have accrued to the farmer by virtue of the program is unrelated to a benefit on the exported product. Respondents cite the case of *Final Affirmative Countervailing Duty Determination: Bars and Shapes from Mexico* (49 FR 13178), in which the Department found concessionary financing of equipment provided to producers of bars and shapes not be a countervailable subsidy because the "benefit of the financing accrued to the equipment manufacturer not to the bar and shape producer." Respondents argue, therefore, that similarly, the mortgage program can only benefit the farmer by allowing him to realize higher prices, but that the miller still must pay the market price.

*DOC Position:* We disagree. See *DOC Position to Respondents' Comment 6*.

*Comment 12:* Respondents argue that the Supplementary Program confers no benefit. They argue that, although millers receive financing at below market rates for paddy rice purchases, they are required to pay either the administered price or the market price, whichever is higher. Respondents claim that the benefit of the financing to millers was only three percent in 1985 and that the cost of the program to the participating millers was six percent; therefore, the cost of participating should be offset against the benefit. If the offset were allowed, the millers would receive no benefit from this program and thus, the program is not countervailable.

*DOC Position:* We disagree. The loans to the millers are clearly at rates that are inconsistent with commercial considerations and meet the requirement for a domestic subsidy in section 771(5)(B)(i). Respondents have not submitted any information to support their claim for an offset. Moreover, we do not take to account whether or not the risk taken by the millers paid off.

*Comment 13:* Respondents argue that the denominator for determining the *ad valorem* value of all benefits to rice farmers and millers must be the total value of milled rice.

*DOC Position:* We agree and have used the total value of milled rice as the denominator for all domestic programs.

*Comment 14:* Respondents argue that any calculation of the ACFT benefit

should be based on actual usage of the FAF loans received to purchase paddy rice.

*DOC Position:* We disagree. The ACFT received loans from the FAF at an interest rate that is inconsistent with commercial considerations for use in implementing the Paddy Rice program. The amount not used was not returned to the FAF until the end of the fifteen-month term. That this money was not used for its stated purpose is irrelevant, since it was obtained on terms inconsistent with commercial considerations specifically for use in this program.

*Comment 15:* Respondents argue that, should the Department decide that the MOF fertilizer sales program is countervailable, calculation of benefits should be based only on the 16-20-0 fertilizer, since products other than rice receive the benefits from the other 3 types of fertilizers. They also argue that sales of fertilizers received through foreign aid programs should not be subject to countervailing duties and, therefore, that the value of any benefits received from each category of fertilizer sale should be reduced by the proportion that fertilizer received through foreign aid represents of total fertilizer sales.

*DOC Position:* Since we have found the MOF fertilizer sales program not to be countervailable, these arguments are moot.

*Comment 16:* Respondents argue that the market prices on fertilizer presented at verification should be used as the benchmark.

*DOC Position:* Since the program is not countervailable, this argument is moot.

*Comment 17:* Respondents argue that the benchmark for the paddy mortgage program should be 14 percent, the rate the BAAC offers to all agricultural products for crop mortgages.

*DOC Position:* We disagree. This is the rate given by one bank, which is government-owned. We have no information in the record to indicate that 14 percent is the nation-wide benchmark interest rate for the agricultural sector. Therefore, we have used the verified national average commercial interest rates for all sectors of 14.39 percent for 1984 and 14.16 percent of 1985 as our benchmarks.

*Comment 18:* Respondents argue that the market price for fragrant rice is significantly above the market price for other types of rice of the same grade and above the administered price. Consequently the fragrant rice exported to the United States did not benefit by participation in the agricultural



programs, since there was no necessity to support fragrant rice prices. In order to reflect this in the final determination, respondents argue that the *ad valorem* rate for any domestic subsidy programs should be reduced by the ratio of fragrant to non-fragrant rice exports to the United States.

**DOC Position:** We disagree. As stated above, whether the domestic subsidies received are reflected in the price of the exported product is irrelevant under U.S. law. In addition, the pertinent factor is that rice production has received countervailable benefits and these benefits have been allocated over total rice production.

We have calculated subsidies given to all varieties of rice and consequently used the value of all rice in the denominator. Respondents argue that we should reduce the value of the subsidy in the numerator without making the corollary reduction in the denominator for the value of fragrant rice. We believe that the inclusion of the fragrant rice value in the denominator has taken care of any imbalance of the *ad valorem* rate the respondents may be claiming.

**Comment 19:** Respondents argue that the Investment Promotion Act did not confer any countervailable benefits on exports of rice from Thailand. They argue that the business tax reduction claimed by Mah Boonkrong Rice Mill is not countervailable because the privilege is generally available to a large number of industries in Thailand regardless of geographic location.

**DOC Position:** We agree. See section entitled "Investment Promotion Act—Section 35."

**Comment 20:** Respondents argue that the foreign currency account held by Mah Boonkrong Trading Company has never been used and confers no benefit on exports. Even if Mah Boonkrong Trading has used the dollar account, it would not have conferred any benefit on the company's export activities. The company does not need dollars to finance sales, because the company's customers arrange financing through dollar-denominated letters of credit. The only use a dollar account would serve be to pay for the company's imports of raw materials. Rice exports, however, do not contain any imported raw materials.

**DOC Position:** We agree that the dollar account held by Mah Boonkrong confers no benefits on exports in this case. We verified that the dollar account held by Mah Boonkrong is minimal and has never been used.

## Verification

In accordance with section 766(a) of the Act, we verified all information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government officials, inspection of documents and ledgers, and tracing the information in the responses to sources documents, accounting ledgers, and financial statements.

## Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The cash deposit rate is 0.82 percent *ad valorem*.

In accordance with section 706(a)(3) of the Act, we are directing the U.S. Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from Thailand, which is entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published pursuant to sections 303 and 705(d) of the Act (19 U.S.C. 1303, 1671d(d)).

April 2, 1986.

Paul Freedenberg,

Assistant Secretary, for Trade Administration.

[FR Doc. 86-8029 Filed 4-9-86; 8:45 am]

BILLING CODE 3510-DS-M

## COMMISSION ON THE UKRAINE FAMINE

### Background

The Commission on the Ukraine Famine was created by Pub. L. 98-473, approved October 12, 1984, as was allocated a sum of \$400,000 to remain available until expended by Pub. L. 99-180. The purpose of the legislation establishing the Commission is to conduct a study of the 1932-33 Ukraine famine in order to expand the world's knowledge of the famine and provide the American public with a better understanding of the Soviet system. So as to accomplish this, the Commission shall submit to Congress for publication a final report on the results of the famine study no later than two years after the organizational meeting of the Commission and shall terminate sixty days after the submission of said report.

The Commission consists of fifteen members, including:

From the United States House of Representatives

Hon. Daniel A. Mica (Chairman) (D-Fl)  
Hon. William Broomfield (R-Mi)  
Hon. Benjamin Gilman (R-NY)  
Hon. Dennis Hertel (D-Mi)

From the United States Senate

Senator Dennis DeConcini (D-Az)  
Senator Robert Kasten (R-Wi)

From the Executive Branch

Undersecretary Gary L. Bauer,  
Department of Education  
Hon. H. Eugene Douglas, Ambassador at Large  
Surgeon General C. Everett Koop,  
Department of Health and Human Services

From the Ukrainian-American Community

Mr. Bohdan Fedorak  
Dr. Myron Kuropas  
Mr. Daniel Marchishin  
Mrs. Ulana Mazurkevich  
Dr. Oleh Weres  
One additional member to be appointed by the Chairman

This notice announced the organizational meeting of the Ukraine Famine Commission.

Time: 9:00 am-1:00 am; April 23, 1986

Place: 2255 Rayburn House Office Building

Status: Open meeting

Agenda: Swearing in of members; Administrative and organizational matters; General discussion

Contact: James E. Mace, Telephone: (202) 254-3464

Daniel A. Mica,

Chairman, Ukraine Famine Commission.

April 7, 1986.

[FR Doc. 86-8078 Filed 4-9-86; 8:45 am]

BILLING CODE 6820-RS-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary of Defense

#### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group D (Production) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 10:00 a.m., Friday, May 2, 1986.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.



**FOR FURTHER INFORMATION CONTACT:** Thomas Henion, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group D meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Working Group D area includes all production aspects of critical electronic components for the defense electronic supply base; the transition of components from research and development into production, e.g., manufacturing technology; policy and acquisition steps necessary to insure that there is a sufficient domestic supply base for critical electronic components; and steps necessary to insure the continuing availability of skilled people to support the critical electronic component supply base. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Patricia H. Means,  
OSD Federal Register Liaison Officer,  
Department of Defense.

April 4, 1986.

[FR Doc. 86-7967 Filed 4-9-86; 8:45 am]

BILLING CODE 3810-01-M

#### President's Blue Ribbon Commission on Defense Management; Meeting

**ACTION:** Notice of closed meeting.

**SUMMARY:** The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:30 a.m. on May 6 and 7, 1986, at 735 Jackson Place NW., Washington, DC 20503.

Discussion during the meeting will include classified matters of national security and other matters which cannot be addressed in open forum throughout.

Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public.

**AGENDA:** The Commission will meet to continue its consideration of defense management and organization issues and its preparation of further reports to the President on the defense acquisition process.

**FOR FURTHER INFORMATION CONTACT:** Mr. Herbert E. Hetu (Public Affairs), 1899 L Street NW., Suite 400, Washington, DC 20036. Telephone: (202) 466-7080 or (202) 395-3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 4, 1986.

[FR Doc. 86-7966 Filed 4-9-86; 8:45 am]

BILLING CODE 3810-01-M

#### Department of Defense Wage Committee; Meeting

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, May 6, 1986; Tuesday, May 13, 1986; Tuesday, May 20, 1986; and Tuesday, May 27, 1986 at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b(c)(2)), and

those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered as related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

April 4, 1986.

[FR Doc. 86-7968 Filed 4-9-86; 8:45 am]

BILLING CODE 3810-01-M

#### Department of the Air Force

##### USAF Scientific Advisory Board; Meeting

April 2, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee to Review the Air Force Science and Technology Programs for Reliability, Maintainability and Logistics will conduct a closed meeting at Wright-Patterson AFB, Ohio and Rome AFB, New York from April 28-30, 1986, from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting will be to review Air Force Reliability, Maintainability and Logistics technology programs and evaluate their completeness and innovativeness to achieve Air Force goals.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the



Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 86-7982 Filed 4-9-86; 8:45 am]

BILLING CODE 3910-01-M

#### USAF Scientific Advisory Board; Meeting

April 3, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology efforts to Complement the Strategic Defense Initiative Program will meet at Hanscom AFB, MA on April 28, 1986, from 8:30 a.m. to 5:00 p.m.

The purpose of the meeting will be for the Battle Management/C<sup>3</sup> Subpanel to review Air Force communications and computer architecture programs supporting space requirements, evaluate their completeness, and assess gaps/overlaps in meeting total Air Force space requirements.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 86-7975 Filed 4-9-86; 8:45 am]

BILLING CODE 3910-01-M

#### USAF Scientific Advisory Board; Meeting

April 2, 1986.

The USAF Scientific Advisory Board Ad Hoc Committee on Appropriate Air Force Technology Efforts to Complement the SDI Program will meet at Kirtland AFB, NM on April 28, 1986 from 1:30 pm to 5:00 pm and on April 29, 1986 from 8:00 am to 4:30 pm.

The purpose of the meeting will be for the DEW panel to review Air Force DEW programs for completeness and ability to satisfy AF space requirements.

The meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8404.

Patsy J. Conner,

*Air Force Federal Register Liaison Officer.*

[FR Doc. 86-7976 Filed 4-9-86; 8:45 am]

BILLING CODE 3910-01-M

#### Corps of Engineers; Department of the Army

##### Intent To Prepare a Draft Supplemental Environmental Impact Statement for a Proposed Use of Sub-Aqueous Borrow Pits as a Site for Disposal of Dredged Material From the Port of New York and New Jersey

**AGENCY:** Army Corps of Engineers, DOD.

**ACTION:** Notice of intent to prepare a draft supplemental environmental impact statement. This notice supersedes one printed in Vol. 50, No. 239, pp 50827 of the Dec. 12, 1985 *Federal Register* that announced the intention to prepare an EIS. Instead, the document will be prepared as a supplement to the generic EIS on the Disposal of Dredged material from the Port of New York and New Jersey (finalized and filed with EPA in March, 1983).

#### SUMMARY:

##### 1. Description of Proposed Action

Operational program to dispose of dredged material in existing or new subaqueous borrow pits. The source of the dredged material is navigation projects in the Port of New York and New Jersey. This disposal action is primarily intended for disposal of material which has not satisfied EPA's testing criteria for unrestricted ocean disposal. Existing pits and potential areas for the excavation of new pits are located primarily in Lower New York Harbor.

##### 2. Reasonable Alternatives

- (a) Alternative borrow pit sites:
  - (1) Selection of one or more suitable existing pit(s).
  - (2) Excavation of new pits.
- (b) Alternative methods of filling pit(s):
  - (1) Fill completely.
  - (2) Fill incomplete so that some depression remains.
  - (3) Capping alternative (sand vs. mud vs. no cap).
- (c) Alternative methods of dredged material disposal:
  - (1) Ocean disposal.
  - (2) Containment islands and areas (land extensions).
  - (3) Upland disposal.

##### 3. Scoping Process

###### a. Public Involvement

- (1) Public Meeting held Dec, 1985 (announced in Dec. 12, 1985 *Federal Register*).
- (2) Public Information Coordination Group formed to discuss this and other disposal alternatives (ongoing process).

(3) Draft and Final SEIS will be circulated to all known interested parties and agencies.

(4) Additional Public Meetings will be held as necessary (most likely as a means of soliciting comments to draft SEIS).

##### b. Significant Issues Requiring in-Depth Analysis

(1) The impact of filling pits to fisheries, benthos and water quality in N.Y. Harbor.

(2) The impact of filling pits on present and future sand mining operations.

(3) Site selection criteria (including the use of existing vs. new pits).

##### c. Assignments

Agencies having jurisdiction under law will be asked to be cooperating agencies.

##### d. Environmental review and consultation

Appropriate concerned agencies and the Dredged Material Management Plan Steering Committee and Public Involvement Coordinating Group will be consulted during EIS preparation. Comments or questions should be addressed to Len Houston, Borrow Pit EIS Coordinator, at (212) 264-4662 or Environmental Analysis Branch, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, N.Y., NY 10278-0090.

4. Scoping Meeting will not be held.  
5. Estimated date of statement availability June, 1986.

Address: Project Manager: Mario Paula, ATTN:NANOP-RQ, Tel No. (212) 264-5622, FTS 264-5622; EIS Coordinator: Len Houston, ATTN:NANPL-E, Tel No. (212) 264-4662, FTS 264-4662; U.S. Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10278-0090.

Dated: March 18, 1986.

Samuel P. Tosi,

*Chief, Planning Division.*

[FR Doc. 86-8032 Filed 4-9-86; 8:45 am]

BILLING CODE 3710-06-M

#### DEPARTMENT OF EDUCATION

##### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed information collection requests.

**SUMMARY:** The Director, Information Resources Management Service invites comments on the proposed information



collection requests as required by the Paperwork Reduction Act of 1980.

**DATE:** Interested persons are invited to submit comments on or before May 12, 1986.

**ADDRESSES:** Written comments should be addressed to the Office of Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 4074, Switzer Building, Washington DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Margaret B. Webster, (202) 426-7304.

**SUPPLEMENTARY INFORMATION:** Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with an agency's ability to perform its statutory obligations.

The Director, Information Resources Management Service publishes this notice containing proposed information collection requests prior to the submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of the collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: April 7, 1986.

George P. Sotos,  
Director, Information Resources Management Service.

#### Office of the Undersecretary

Type of Review: New

Title: Survey and Interview of Adult Literacy Activities

Agency Form Number: R80-6P

Frequency: On occasion

Affected Public: State and local

governments, business and other for-

profit, federal agencies, and non-profit institutions.

Reporting Burden: Responses: 1500,

Burden Hours: 1500

Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 0

**Abstract:** The Survey of Adult Literacy Activities is needed to collect information about State activities that address the problem of functional illiteracy in the United States. This effort is part of President Reagan's Adult Literacy Initiative.

#### Office of Postsecondary Education

Type of Review: New

Title: Pell Grant Pilot Project Institution Survey

Agency Form Number: E40-19P

Frequency: Annually

Affected Public: Businesses or other for-profit and non-profit institutions

Reporting Burden: Responses: 68; Burden Hours: 6.8

Recordkeeping Burden: Recordkeepers: 0, Burden Hours: 0

**Abstract:** This survey will provide data on the willingness of the current participants of the Pell Grant Electronic Data Transfer Pilot Project to continue their participation on a cost sharing basis for the 1986-87 grant cycle.

[FR Doc. 86-8022 Filed 4-9-86; 8:45 am]

BILLING CODE 4000-01-M

#### Office of Postsecondary Education

##### OMB Approval of Agency Information Collection; Guaranteed Student Loan Program

**AGENCY:** Department of Education.

**ACTION:** Notice of OMB approval under the Paperwork Reduction Act.

In February, 1986, in order to inform lenders of the effect of the Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. 99-177, the Department of Education issued Bulletin 86-L-87 with ED Form 799 Addendum and Bulletin 86-L-89 (LD) with ED Form 799A Addendum. The Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) requires the Department to submit the two forms included as addenda to the bulletins to the Office of Management and Budget (OMB) for approval.

Since the requisite OMB approval was not obtained by the Department prior to distributing the forms, the Secretary published on March 17, 1986 (51 FR 9096) a notice of the forms' non-approved status and the need to obtain OMB approval.

The forms were approved by OMB on March 26, 1986. The Form 799 Addendum was assigned OMB control

number 1840-0034 with an expiration date of September, 1987. The Form 799A Addendum was assigned OMB control number 1840-0530 with an expiration date of September, 1987. These control numbers and expiration dates are the same as the ones assigned to the forms to which the addenda are attached. The Secretary publishes this notice to inform the public that the forms have been approved by OMB under the Paperwork Reduction Act. As of the date this notice is published in the *Federal Register*, lenders are required to report information on the appropriate form.

#### FOR FURTHER INFORMATION CONTACT:

Carol Roberts, Acting Chief, Guaranteed Student Loan Branch, Room 4310, ROB-3, 400 Maryland Ave., SW., Washington, DC 20202. Telephone: (202) 245-2475.

Dated: April 3, 1986

William J. Bennett,

Secretary of Education.

[FR Doc. 86-8020 Filed 4-9-86; 8:45 am]

BILLING CODE 4000-01-M

#### National Council on Educational Research; Meeting

**AGENCY:** National Council on Educational Research.

**ACTION:** Full Council Meeting of the National Council on Educational Research.

Matters to be Discussed: Swearing in of new and reappointed members; reports from chairmen of committees; old and new business.

Date: April 25th, 1986.

Address: U.S. Department of Education, Conference Room 3000, 400 Maryland Avenue, SW., Third Floor-FOB-6, Washington, DC 20202.

Status: Open.

Time: Friday, April 25, 1986 9:00 a.m.—5:00 p.m.

#### FOR FURTHER INFORMATION CONTACT:

Mary Grace Lucier, National Council on Educational Research, 2000 L Street, NW., Suite 617-B, Washington, DC 20036, 202-254-7490.

#### SUPPLEMENTARY INFORMATION:

The National Council on Educational Research is established under 20 U.S.C. 1221e; Department of Education organization plan implemented pursuant to Section 413 of Pub. L. 96-88 and notice to Congress dated July 2, 1985. The Council is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 *et seq.*), and the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) which set forth the standards for the



formation and use of advisory committees. The Council advises the Secretary on policies and priorities for the Office of Educational Research and Improvement (OERI). The Council reviews the conduct of OERI and advises the Secretary and Assistant Secretary on development of programs to be carried out by OERI.

The meetings of the Council are open to the public, unless otherwise stated.

Dated: April 7, 1986.

Mary Grace Lucier,  
National Council on Educational Research.  
[FR Doc. 86-8077 Filed 4-9-86; 8:45 am]  
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP86-64-000]

#### Algonquin Gas Transmission Co.; Filing of Rate Schedule

April 7, 1986.

Take notice that on March 31, 1986, Algonquin Gas Transmission Company ("Algonquin Gas"), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed a proposed Rate Schedule 311-T, consisting of the following nine sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sixth Revised Sheet No. 100.

Superseding Fifth Revised Sheet No. 100

Original Sheet Nos. 538-550

Original Sheet No. 551

Original Sheet No. 552

Original Sheet No. 553

Original Sheet No. 554

Original Sheet No. 555

Original Sheet No. 556

Original Sheet Nos. 557-599

Algonquin Gas states that such tariff sheets are proposed to become effective October 31, 1985 and to remain effective for the limited term ending June 30, 1986.

The filing indicates that such tariff sheets, together with their proposed effectiveness, are being filed in order to meet the requirements of Section 284.7 of the Commission's Regulations. The reason for the filing of this rate schedule is to provide a vehicle for NGPA § 311 transportation services by Algonquin Gas during the interim period ending June 30, 1986 which has been established by Commission regulation, it is said. Algonquin Gas notes that the proposed service is "open access" in nature, and is available not only to existing customers but also to any other customer qualifying for NGPA § 311

service under the Commission's Regulations.

Algonquin Gas has requested the Commission to effectuate such tariff sheets as soon as possible, noting that world oil prices have been declining rapidly and have placed significantly greater pressures on Algonquin Gas' Customers in their efforts to compete for alternative fuel markets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8066 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-39-001]

#### Conoco Inc.; Request To Extend Authority for Partial Abandonments and for Blanket Certificate Authorization for Sales for Resale and Transportation

April 7, 1986.

Take notice that on March 27, 1986, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed a request pursuant to sections 4 and 7 of the Natural Gas Act (15 U.S.C. 717c and f) and Parts 154 and 157 of the Commission's Regulations under the Natural Gas Act (18 CFR Part 157), for extension of authorizations previously granted in this docket for: (1) Partial abandonments of certain certificated sales; (2) authorization for certain sales for resale with pregranted abandonment; and (3) authorization for certain transportation with pregranted abandonment.

Any person desiring to be heard or to make any protest with reference to said request for extension of authority should on or before April 21, 1986 file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and

procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under this procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8067 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-22-004]

#### Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 7, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on March 31, 1986, filed Second Substitute Eighth Revised Sheet No. 31 to comply with the Commission's suspension order in this proceeding issued February 28, 1986.

The filing reduces Consolidated's RQ commodity rates by 3.99 cents per dekatherm from the PGA rates filed February 14, 1986.

The filing, Consolidated states, complies with the conditions of the suspension order including Ordering Paragraphs (B), (D), (E), (F) and (H). Consolidated proposes to comply with Ordering Paragraph (C) of the suspension order for compliance filing purposes only, pending Commission action upon Consolidated's request for rehearing.

Copies of the filing were served upon Consolidated's jurisdictional customers, interested state commission's and parties to the proceeding.

Any person desiring to be heard or to make said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to



become party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8068 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C186-275-000]

### Crystal Oil Co.; Application for Abandonment of Service

April 7, 1986.

Take notice that the Applicant listed herein has filed an application pursuant

to section 7 of the Natural Gas Act for authorization to abandon service as described herein.<sup>1</sup>

The circumstances presented in the application meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before 15 days after the date of publication of this

notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.	Pressure base
C186-275-000; B Mar. 18, 1986 <sup>1</sup>	Crystal Oil Co.	Texas Gas Transmission Corp., Minden and Carterville Fields, Webster Parish, Louisiana.	(?)	

<sup>1</sup> Additional information received March 27, 1986.

<sup>2</sup> Applicant requests authorization to abandon its sale of gas to Texas Gas from three wells. Applicant states that the H. C. Cox No. 1 Well is an NGPA section 104 recompletion well, the Frazier C-1 Well is an NGPA section 107(c)(5) well, and the NEBO Fee Well No. 89-D is an NGPA section No. 108 Well. Applicant states that the deliverability of the Frazier C-1 Well is 526 Mcf/d, the deliverability of the NEBO Fee Well No. 89-D is 631 Mcf/d and the deliverability of the H. C. Cox No. 1 Well is unknown since this well has been shut-in for over two years. Applicant states that Texas Gas is taking only 2.5% of deliverability and that, to Applicant's knowledge, Texas Gas is not paying for gas not taken. Applicant states that it is undergoing severe economic hardship and it has arranged to sell 100% of its gas to an alternative market.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 86-8064 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-45-000]

### El Paso Natural Gas Co.; Shortening Comment Period

March 27, 1986.

On March 21, 1986, El Paso Natural Gas Company (El Paso) filed a motion to shorten the period for filing comments on an offer of settlement filed March 21, 1986, in the above-docketed proceeding. In its motion, El Paso requests that the comment period be shortened in order to expedite Commission review of the proposed agreement. On March 24, 1986, Process Gas Consumer Group filed an answer in opposition to El Paso's motion. On March 26, 1986, the El Paso Municipal Customer Group filed an answer opposing El Paso's motion in part. On that same date, Mobil Oil Corporation filed an answer in opposition to El Paso's filing.

<sup>1</sup> This application was included in a basket notice issued March 31, 1986, in Docket No. G-5716-030, *et al.*, which should be disregarded. That notice did not adequately describe the circumstances involved and therefore did not constitute proper notice to the public.

Upon consideration, notice is hereby given that the period for filing comments is shortened to and including April 4, 1986. Reply comments shall be filed on or before April 14, 1986.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-8069 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-65-000]

### Granite State Gas Transmission, Inc.; Filing Proposed Tariff Changes

April 7, 1986.

Take notice that on April 1, 1986 Granite State Gas Transmission, Inc. (Granite State) tendered for filing Fifteenth Revised Sheet No. 7 and Third Revised Sheet No. 68 in its FERC Gas Tariff, First Revised Volume No. 1, containing proposed changes in rates for effectiveness on April 1, 1986. According to Granite State, the revised rates submitted with its filing restate its Base Tariff rates for its jurisdictional sales of natural gas in compliance with the requirements of § 154.38(4)(d)(vi)(a) of the Commission's Regulations under the Natural Gas Act.

Granite State further states that its

restated Base Tariff rates are applicable to its wholesale sales to Bay State Gas Company and Northern Utilities, Inc. According to Granite State, copies of its filing were served on the foregoing customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8070 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M



[Docket No. TA86-6-51-000, 001]

**Great Lakes Gas Transmission Co.;  
Proposed Changes in FERC Gas Tariff  
Under Purchased Gas Adjustment  
Clause Provisions**

April 7, 1986.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on March 31, 1986, tendered for filing Fifty-Eighth Revised Sheet No. 57, and Twelfth Revised Sheet No. 57-A to its FERC Gas Tariff, First Revised Volume No. 1, proposed to be effective May 1, 1986.

Fifty-Eighth Revised Sheet No. 57 reflects a purchased gas cost surcharge resulting from maintaining an unrecovered purchased gas cost account for the period commencing September 1, 1985 and ending February 28, 1986 including an agreed adjustment to carrying charges resulting from a FERC compliance audit.

Twelfth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing May 1, 1986 and ending October 31, 1986. No incremental costs are estimated for this period.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary,

[FR Doc. 86-8071 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-4-46-000, 001]

**Kentucky West Virginia Gas Co.;  
Proposed Change in Rates**

April 7, 1986.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 28, 1986, tendered for filing with the Commission its Thirty-Sixth Revised Sheet No. 27 and Nineteenth

Revised Sheet No. 27A to its FERC Gas Tariff, first Revised Volume No. 1, to become effective May 1, 1986.

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of FERC Gas Tariff, First Revised Volume No. 1.

The current purchase gas adjustment is a decrease of 8.11 cents per dekatherm (dth). The deferred gas cost adjustment is a reduction of 6.06 cents per dth. These changes result in a net decrease to the jurisdictional purchase gas cost charge in this filing of 14.7 cents per dth.

Kentucky West further states that the Tariff sheet filed herewith does not reflect the Market Incentive Purchase Gas Cost Charge which the Commission rejected at its meeting on March 26, 1986, and is filed without prejudice to any further pleadings or tariff filings, which Kentucky West may make in light of that rejection.

Kentucky West further states that on January 21, 1986, the United States Court of Appeals for the Fifth Circuit rendered a decision reversing the Commission's denial of Kentucky West's right to collect NGPA prices for its own production for the period November 1, 1979 to March 2, 1983 (Kentucky West Virginia Gas Company v. FERC, No. 82-4594). The mandate has not yet been issued in that case. By this filing, Kentucky West does not waive its right to collect such amounts nor the right to collect carrying charges applicable thereto.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party on the service list of Docket No. RP86-52.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-8072 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA86-1-27-002]

**North Penn Gas Co. Proposed  
Changes in FERC Gas Tariff**

April 7, 1986.

Take notice that North Penn Gas Company (North Penn) on April 2, 1986, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause and the Federal Energy Regulatory Commission's (Commission) letter order dated February 25, 1986, in Docket Nos. TA86-1-27-000,001 to be effective March 1, 1986.

The Commission's letter order dated February 25, 1986, accepted North Penn's PGA filing "subject to North Penn filing revised rates to be effective March 1, 1986 to reflect any revision in its pipeline supplier rates being tracked therein."

This filing reflects North Penn's pipeline supplier rates filed and approved to be effective March 1, 1986, and additional by reflects North Penn's reduced contract volumes filed by Tennessee Gas Pipeline Company (Tennessee) in Docket No. CP84-441.

Additionally, North Penn has included the jurisdictional portion of the refund received from Tennessee as a result of the contract reduction in Docket No. CP84-441. The Company states that it has been requested to flow-through this refund in its March, 1986 PGA filing by its major jurisdictional customer, Corning Natural Gas Corporation (Corning) and its major customer, New York State Electric and Gas Corporation. The Company states that it has no reason to believe that any other party to this proceeding is opposed to the inclusion of this refund in this PGA filing.

In all other aspects this filing contains the same changes as filed by North Penn on February 10, 1986, in Docket Nos. TA86-1-27-000,001 and approved by the Commission's letter order dated February 25, 1986.

North Penn respectfully requests waiver of any of the Commission's Rules and Regulations as may be required to permit this filing to become effective March 1, 1986 as proposed.

Copies of this letter of transmittal and all enclosures are being mailed to each



of North Penn's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8073 Filed 4-9-86; 8:45am]

BILLING CODE 6717-01-M

[Docket No. GP85-38-000]

**Northwest Pipeline Corp.; Petition To Reopen and Vacate Final Well Category Determinations and Request for Withdrawal of Application**

Issued: April 7, 1986.

State of New Mexico, Section 108 NGPA Determination, Northwest Pipeline Corp., San Juan No. 30-5 Unit No. 7 Well, FERC Nos. JD85-17663 and JD85-21919. Notice of petition to reopen and vacate final well category determinations and request for withdrawal of application.

On May 13, 1985, the Bureau of Land Management, Albuquerque, New Mexico District Office, filed with the Federal Energy Regulation Commission a letter dated April 25, 1985, received by it from Northwest Pipeline Corporation (Northwest). Lake City, Utah 84110-1526. The letter constitutes, *inter alia*, a petition by Northwest pursuant to § 275.205 of the Commission's regulations,<sup>1</sup> to reopen and vacate the captioned final well category determinations under section 108 of the Natural Gas Policy Act of 1978 (NGPA)<sup>2</sup> for the San Juan No. 30-5 Unit No. 7 well, Rio Arriba County, New Mexico, and to withdraw its application for the determinations.

With respect to the question of refunds arising out of Northwest's petition, notice is hereby given that the question of whether refunds, plus interest computed under 18 CFR 154.102(c), will be required is a matter

subject to the review and final decision of the Commission.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214<sup>3</sup> or 211<sup>4</sup> of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 15 days following publication of this notice in the Federal Register. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of the petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8065 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR86-63-000]

**Southern Natural Gas Co., Proposed Changes in FERC Gas Tariff**

April 7, 1986.

Take notice that Southern Natural Gas Company (Southern) on March 31, 1986 tendered for filing proposed changes in its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Volume No. 2, and First Revised Volume No. 2A. The tariff sheets proposed in Appendix A reflect an annual overall jurisdictional rate increase of approximately \$88 million. Southern states that the principal reasons for the proposed rate increase are the sharp decline in Southern's sales and the corresponding increase in take-or-pay payments and one-time payments made in lieu of take-or-pay obligations.

Southern also submitted alternate tariff sheets based on the same cost classification, allocation and rate design as the Appendix A tariff sheets but including a proposed annual commodity minimum bill the effect of which would reduce the proposed increase in commodity rates by approximately \$23 million annually.

For the purposes of its filing Southern has classified and allocated costs and designed its rates based on the modified fixed variable methodology. Southern has also proposed seasonal and block rates.

Copies of the filing were served upon Southern's jurisdictional customers and interested state public service commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8074 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-186-000, CI85-206-000, CI85-207-000, CI85-213-000]

**Valero Interstate Transmission Co. and Shell Western E & P Inc.; Change in Comment Dates**

March 27, 1986.

On March 26, 1986, Valero Interstate Transmission Company (Valero) filed a motion requesting a modification of the period for filing comments on a Second Amendment to Stipulation and Agreement filed March 12, 1986, in the above-docketed proceeding. In its motion, Valero requests that the period for filing comments on this Second Amendment be extended pending the company's filing of its Third Amendment to Stipulation and Agreement, in this proceeding. Valero states that the parties to this proceeding and Commission Staff do not object to the company's motion. Notice is hereby given that comments on the Second Amendment to Stipulation and Agreement and the Third Amendment to Stipulation and Agreement shall be filed ten days after the filing of the Third Amendment. Reply comments shall be filed five days thereafter.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-8075 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

<sup>1</sup>18 CFR 275.205 (1985).

<sup>2</sup>15 U.S.C. 3318 (1982).

<sup>3</sup>18 CFR 375.214 (1985).

<sup>4</sup>18 CFR 275.211 (1985).



[Docket No. TA86-2-49-000, 001]

**Williston Basin Interstate Pipeline Co.;  
Purchased Gas Cost Adjustment Filing**

April 7, 1986.

Williston Basin Interstate Pipeline Company (Williston Basin), on March 31, 1986, submitted for filing as part of its FERC Gas Tariff the following tariff sheets:

**First Revised Volume No. 1**

Substitute Original Sheet No. 5

Second Substitute Original Sheet Nos. 10-11

Substitute Original Sheet Nos. 91-100

**Original Volume No. 1-A**

Substitute Original Sheet No. 5

Second Substitute Original Sheet Nos. 10-11

Substitute First Revised Sheet Nos. 275-277

**Original Volume No. 2**

Second Substitute First Revised Sheet No. 2

Second Substitute Third Revised Sheet Nos. 10-11

Second Substitute First Revised Sheet No. 20

First Revised Sheet Nos. 21-30

The proposed effective date of the tariff sheets is May 2, 1986.

Second Substitute Original Sheet Nos. 10 and 11 (First Revised Volume No. 1) and Second Substitute Third Revised Sheet Nos. 10 and 11 (Original Volume No. 2) and the schedules in support thereof were computed in adherence to Williston Basin's PGA clause as revised and conforms to the Commission's Rules and Regulations regarding a unit of sales methodology, except that "proxy" price levels are reflected in the current gas cost adjustment of those gas supply sources where contract amendments are being negotiated but are not yet signed. The use of such "proxy" pricing was allowed in Docket Nos. TA85-3-49-000 and TA85-3-49-001 and in Docket Nos. TA86-1-49-000 and TA86-1-49-001. The changes herein reflect a cumulative gas cost adjustment for Rate Schedules G-1, SGS-1, I-1, E-1, and X-1 of (7.784) cents per dkt. The surcharge adjustment for Rate Schedules G-1, SGS-1, I-1, which also reflects "proxy" pricing as allowed in the last PGA, is 6.110 cents per dkt. These changes represent a net increase in rates for Rate Schedules G-1, SGS-1, I-1 and E-1 of 15.904 cents per dkt from the levels included in rates allowed in Docket No. RP86-10-000 *et al.*, and also effective on May 2, 1986. Rate Schedule X-1 shows a net decrease of 7.784 cents per dkt. Rate Schedule X-5 reflects a cumulative gas cost adjustment of (20.390) cents per dkt.

The rates proposed herein by Williston Basin to go into effect on May 2, 1986 were computed pursuant to revised terms of its Purchased Gas Cost Adjustment Provision, Section 21 of its General Terms and Conditions, as revised to conform to a "unit of sales" methodology.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8076 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

**[Project No. 9647-000]****Walter H., Patricia L., Harry V., &  
Dorothy L. Hammeken; Application  
Filed With the Commission**

April 7, 1986.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

- a. Type of Application: Exemption (5MW or Less).
- b. Project No.: 9647-000.
- c. Date Filed: November 26, 1985.
- d. Applicant: Walter H., Patricia L., Harry V., and Dorothy L. Hammeken.
- e. Name of Project: Hammeken's Power House Canal.
- f. Location: On Power House Canal, a tributary to the East Fork Russian River, near Potter Valley, in Mendocino County, California (Section 6 of T17N, R11W, M.D.M.&B.).
- g. Filed Pursuant to: Section 408 of Energy Security Act, (16 U.S.C. 2705, and 2708 as amended).
- h. Contact Person: Mr. Walter H. Hammeken, P.O. Box 100, 14100 Power House Road, Potter Valley, CA 95469, (707) 743-1666.
- i. Comment Date: May 23, 1986.
- j. Description of Project: The proposed run-of-river project would utilize an existing Pacific Gas and Electric

Company (PG&E) dam that is part of Project No. 77 and would consist of: (1) A concrete anti vortex shield; (2) two 4-foot-diameter, 12-foot-long steel penstocks; (3) a powerhouse containing two turbine-generator units with a combined rated capacity of 300 kW operating under a head of 15.5 feet; and (4) a 12.4-kV, 540-foot-long transmission line interconnecting the project to an existing PG&E substation. The project's estimated average annual generation of 1.5 GWh would be sold to PG&E.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

**A3. Development Application**—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

**A9. Notice of intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

**B. Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**C. Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the



Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**D3a. Agency Comments**—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 86-7959 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9884-000 et al.]

# **Hydroelectric Applications (City of Tuscaloosa, AL et al.); Applications Filed With the Commission**

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory

Commission and are available for public inspection:

1 a. Type of Application: Preliminary Permit.

b. Project No.: 9884-000.

c. Date Filed: January 24, 1986.

d. Applicant: City of Tuscaloosa, Alabama.

e. Name of Project: Lake Tuscaloosa.

f. Location: On the North River near Tuscaloosa, Tuscaloosa County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person:

Mr. Robert W. Ennis, City Attorney, City of Tuscaloosa Legal Department, Post Office Box 2089, Tuscaloosa, AL 35403.

Mr. Platt W. Davis III, Vinson & Elkins, 1101 Connecticut Avenue, NW., Washington, DC 20036.

Mr. William P. Jackson, Jr., Jackson & Jessup, P.C., Post Office Box 1240, Arlington, VA 22210.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing earthfill dam approximately 125 feet high and 1,280 feet long; (2) an existing 5,885 acre reservoir with a storage capacity of 190,000 acre-feet at an elevation of 223 msl; (3) an existing reinforced concrete intake tower; (4) an existing penstock consisting of 102 feet of 96-inch-diameter reinforced concrete pipe, a 20-foot-diameter tunnel 260 feet long; and 20 feet of 66-inch reinforced concrete pipe; (5) a proposed 66-inch-diameter steel or ductile iron penstock approximately 400 feet long; (6) a proposed reinforced concrete powerhouse approximately 30 feet by 40 feet housing a 3,000-kW generator; (7) a tailrace consisting of an existing 20 foot wide diversion channel; (8) a proposed 13.2-kV transmission line 3.9 miles long; and (9) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 13.8 GWh. The project energy would be used by the Applicant at its water treatment plants and excess energy would be sold to Alabama Power Company. The dam is owned by the City of Tuscaloosa, Alabama.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, & D2.

l. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based

on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$20,000.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9835-000.

c. Date Filed: December 31, 1985.

d. Applicant: American Hydro Power Company.

e. Name of Project: Cowanesque.

f. Location: On the Cowanesque River in Tioga County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Peter A. McGrath, American Hydro Power Company, 33 Rock Hill Road, Bala Cynwyd, PA 19004-2010, (215) 668-8143.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would utilize the existing Corps of Engineers' Cowanesque Dam and would consist of: (1) A new concrete intake tower structure; (2) a new 8-foot-diameter, 950-foot-long steel penstock; (3) five new generating units, supported on concrete thrust blocks, with a total installed generating capacity of 2,661 kW; (4) a new 40-foot-wide, 100-foot-long rip rap lined stilling basin; (5) a new transmission line, 2,000 feet long; and (6) appurtenant facilities. The Applicant estimates the average annual generation would be 7,855,000 kWh.

k. Purpose of Project: Project power would be sold to the Pennsylvania Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$50,000.

3 a. Type of Application: Preliminary Permit.

b. Project No.: 9751-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Wegatchie Hydro Power Project.



f. Location: On the Oswegatchie River near the Town of Rossie, St. Lawrence County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547.

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) Two proposed diversion structures, the reconstructed upstream structure will be a concrete weir less than four feet high and 28 feet wide, the downstream structure will be a fabricated steel crest gate with concrete abutments approximately 10 feet high and 85 feet wide; (2) a proposed 35 acre impoundment which will extend approximately 2,000 feet upstream and have an average depth of 8 feet with a surface elevation of 346 msl; (3) a proposed intake canal 35 feet wide, 10 feet deep, and 400 feet long; (4) a proposed reinforced concrete flume 30 feet wide and 40 feet long containing two 500 kW bulb turbine-generators for a total capacity of 1,000 kW; (5) a proposed tailrace 30 feet wide, 8 feet deep, and 30 feet long; (6) a proposed 13.2-kV transmission line approximately 100 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 5.0 GWh. The project power would be sold to Niagara Mohawk Power Corporation. The dam is owned by James O'Hara, Antwerp, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$35,000.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9745-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Ludlowville Hydro Project.

f. Location: On Salmon Creek near Ludlowville, Tompkins County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547.

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed concrete diversion structure 2.4 feet high and 50 feet long at a breached dam site; (2) a proposed  $\frac{1}{2}$  acre reservoir with a storage capacity of 1.5 acre-feet at an elevation of 470 msl; (3) a proposed 4.5 foot diameter penstock 100 feet long; (4) a proposed concrete powerhouse 10 feet wide, 15 feet long, and 10 feet high housing a 450 kW generator; (5) a proposed tailrace 6 feet wide, 4 feet deep, and 50 feet long; (6) a proposed 4.8 kV transmission line 500 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 2.0 GWh. The project energy would be sold to New York State Electric and Gas Company. The dam site is owned by New York State Department of Environmental Conservation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$21,000.

5 a. Type of Application: Declaration of Intention.

b. Docket No: EL86-7-000.

c. Date Filed: October 28, 1985.

d. Applicant: Mr. Jeff P. Brisebois

e. Name of Project: Secondary Hydro Plant I.

f. Location: On an existing diversion canal off Wainiha River in Kauai Island, Hawaii.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. §§ 817(b).

h. Contact Person: Mr. Jeff P. Brisebois, P.O. Box 728, Hanalei, Kauai, Hawaii 96714, (808) 826-6052.

i. Comment Date: May 21, 1986.

j. Description of Project: The proposed run-of-the-river project would consist of: (1) A 7.5-foot-high, 17.5-foot-long diversion dam; (2) a 7.5-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing a single generating unit with a rated capacity of 150 kW, operating under a head of 14 feet; (4) a short 480 volt transmission line connecting with Kauai Electric Company's (KEC) existing transmission line; and (5) appurtenant facilities. Applicant estimates the average annual generation to be 1.07 MWh which will be sold to KEC.

The Applicant requests that the Commission investigate and determine if there is, pursuant to the Federal Power Act, Section 23(b), federal jurisdiction for the project. The Applicant asserts that the Commission lacks jurisdiction for these reasons: (1) The project is not located on a navigable water of the United States; (2) does not occupy lands of the United States or utilize surplus water or water power from a government dam; and (3) the electricity produced and sold to a public utility in Hawaii does not feed into an interstate grid.

k. This notice also consists of the following standard paragraphs: B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No.: 9752-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Ives Hollow Hydro Power Project.

f. Location: On Spruce Creek near Salisbury, Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547.

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would consist of: (1) Reestablishment of two small concrete weirs less than 15 feet wide and less than 4 feet high; (2) a proposed impoundment less than a tenth of an acre with a storage capacity of less than one-half acre-foot at an elevation of



1,130 msl; (3) a proposed penstock 5 feet in diameter and 150 feet long; (4) a proposed reinforced concrete powerhouse 20 feet by 20 feet housing a 300-kW generator; (5) a proposed tailrace 15 feet wide, 6 feet deep, and 100 feet long; (6) a proposed 13.8-kV transmission line 100 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 1.5 GWh. The project energy would be sold to Niagara Mohawk Power Corporation. The dam is owned by Mark J. Harris, Little Falls, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$12,000.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 9748-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Salisbury Center Hydro Power Project.

f. Location: On Spruce Creek near Salisbury, Herkimer County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person:

Mr. Lawrence R. Taft, 10315

Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547.

Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed crest gate diversion dam 50 feet wide and 8 feet high; (2) a proposed reservoir with a surface area under 10 acres with 40 acre-feet of storage at an elevation of 1,066 msl; (3) a proposed intake structure 10 feet in each dimension; (4) a proposed penstock 5 feet in diameter and 1,500 feet long; (5) a proposed reinforced concrete powerhouse 20 feet by 20 feet housing two 700-kW generators for a total capacity of 1,400 kW; (6) a proposed tailrace channel 20 feet wide,

6 feet deep, and 30 feet long; (7) a proposed 13.8 kV transmission line 500 feet long; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 6.0 GWh. The project energy would be sold to Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope under this Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$55,000.

a. Type of Application: Preliminary Permit.

b. Project No. 9876-000.

c. Date Filed: January 13, 1986.

d. Applicant: Clearwater Hydro Associates.

e. Name of Project: Village Creek Hydro Project.

f. Location: On Village Creek near Birmingham in Jefferson County, AL.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Hays Griswald, Clearwater Hydro Associates, 7104 N. Eldridge Court, Arvada, CO 80004, (303) 420-2370.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed run-of-river project would consist of: (1) An existing concrete gravity dam 106 feet high and 407 feet long with an ogee-shaped side-channel spillway at the south dam abutment 18 feet high with a crest length of 435 feet; (2) Bayview Lake, a reservoir 4 miles long with a surface area of 530 acres and storage capacity of 10,000 acre feet at surface elevation 594 feet mean sea level; (3) a new steel siphon penstock, 6 feet in diameter and 300 feet long; (4) a new powerhouse, 30 feet long and 20 feet wide containing four 200-kW turbine-generators for a total installed capacity of 800 kW; (5) a new 1250-kVA transformer and switchgear; (6) a 12.5-kV transmission line 7,800 feet long; and (7) other appurtenances. Applicant estimates an average annual generation of 4,730,400 kWh. The existing dam is owned by U.S. Steel Corporation.

k. Purpose of Project: Project energy will be sold to Alabama Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies Under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 18 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$19,500.

a. Type of Application: Preliminary Permit.

b. Project No. 9578-000.

c. Date Filed: November 1, 1985.

d. Applicant: Clermont Associates.

e. Name of Project: East Fork.

f. Location: East Fork of the Little Miami River, Clermont County, Ohio.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. Jordon R. Walker, Clermont Associates, 484 East 300 North, Manti, UT 84642, (801) 835-0202.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would utilize the existing East Fork Dam, owned and operated by the U.S. Army Corps of Engineers, and would consist of: (1) A reinforced concrete, multi-level intake structure; (2) a tunnel and penstock; (3) a reinforced concrete powerhouse 60 feet wide and 100 feet long enclosing turbine/generators of 8 MW capacity; (4) a tailrace channel; (5) a 138 kV transmission line 1000 feet long; and (6) appurtenant facilities.

The estimated annual energy production is 42 million kWh. The net hydraulic head is 88 feet. Project power would be sold to Cincinnati Gas & Electric Company.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant



would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$45,000.

10 a. Type of Application: Major License.

b. Project No.: 7076-002.

c. Date Filed: April 26, 1985 as supplemented.

d. Applicant: Northern Wasco County People's Utility District.

e. Name of Project: Dalles Dam North Fishway Hydroelectric.

f. Location: On Columbia River, at the Corps of Engineers' existing Dalles River Dam near Dalles, in Klickitat County, Washington on lands of the United States administered by the Corps of Engineers.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).

h. Contact Person: Mr. Harold E.

Haake, Northern Wasco County People's Utility District, P.O. Box 621, The Dalles, OR 97058, (503) 296-2227.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project is located at the north end of the Corps' of Engineers' existing Dalles Dam, on the auxiliary water supply system to the north fishway ladder. The project would consist of: (1) A 210-foot-long, 20-foot-wide rectangular concrete intake channel; (2) a 10-foot-diameter, 85-foot-long steel penstock; (3) a 35-foot by 64-foot powerhouse containing one generating unit with an installed capacity of 4200 kW at a design head of 80 feet; and (4) a 3-mile-long, 12.5-kV transmission line connecting to the Applicant's existing Lambert Substation. The estimated project cost, in 1984 dollars, is 7.94 million dollars. The project would produce 32.3 million kWh of average annual energy.

k. Purpose of Project: The project power will be used directly by the Applicant or will be sold.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C and D1.

11 a. Type of Application: Preliminary Permit.

b. Project No.: P-9673-000.

c. Date Filed: December 5, 1985.

d. Applicant: WV Hydro Corps.

e. Name of Project: Woods Project.

f. Location: On the Elk River near Tullahoma in Franklin County, TN.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. James B. Price, President, WV Hydro Corp., 120 Calumet Court, Aiken, SC 29802, (803) 648-0276.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed run-of-river project would utilize the existing U.S. Air Force Woods Reservoir and Dam and would consist of: (1) A new intake structure; (2) a new 7.5-foot-diameter penstock, 450 feet long; (3) a new powerhouse containing a 1,500-kW turbine generator unit; (4) a new tailrace; (5) a new switchyard; (6) a new 44-kV transmission line, 1,500 feet long; and (7) other appurtenances. Applicant estimates average annual generation to be 6,000,000 kWh.

k. Purpose of Project: Project energy would be sold to the Tennessee Valley Authority.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 9883-000.

c. Date Filed: January 24, 1986.

d. Applicant: Weyerhaeuser Company.

e. Name of Project: Black Canyon.

f. Location: On the North Fork Snoqualmie River in Sec. 24 & 25, T24N, R8E, near North Bend in King County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. Robert A. Anderson, Western Area Manager, Weyerhaeuser Company, Tacoma, WA 98477, (206) 924-5333.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would consist of: (1) A 23-foot-high diversion dam at elevation 961 feet; (2) a 10-foot-diameter power tunnel with a vertical shaft 340 feet deep and a horizontal length of 7,870 feet; (3) a 10-foot diameter penstock originating at the tunnel portal; (4) a powerhouse containing one generating unit with a capacity of 25 MW; (5) a 60-foot-long tailrace; and (6) a 1,950-foot-long transmission line. A license application for Project No. 5926-002 has been filed by the City of Bellevue for a multi-purpose dam on the North Fork Snoqualmie at river mile 6.7. The question of potential competition between that project and the project being proposed was resolved in a joint Weyerhaeuser Company, City of Bellevue letter dated September 21, 1982. Only the water released from that upstream project (City of Bellevue Project No. 5926-002) will be utilized for this proposed project. Applicant estimates the average annual energy production to be 120,400 MWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental

feasibility studies and prepare an FERC license application at a cost of \$225,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The power produced is proposed to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9889-000.

c. Date Filed: January 29, 1986.

d. Applicant: Davenport Associates.

e. Name of Project: Mississippi Lock & Dam No. 15.

f. Location: On the Mississippi River in Rock Island County, Illinois and Scott County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. J. Kirk Rector, Davenport Associates, 5041 S. Boabab Drive, Salt Lake City, Utah 84117, (801) 272-2030.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers Mississippi Lock and Dam No. 15, having a dam water surface elevation of 561 feet msl and would consist of: (1) Four new steel penstocks each 60 feet long and 19 feet in diameter; (2) a new concrete powerhouse 180 feet by 140 feet containing 4 turbine/generator units having a total installed capacity of 28 MW operating at 16 feet of hydraulic head; (3) a new rock tailrace approximately 100 feet long and 200 feet wide; (4) a new 1.5-mile 69-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 170 GWh.

k. Purpose of Project: The Applicant intends to sell the power generated at the proposed facility to the Iowa-Illinois Gas and Electric Company.

l. This notice also consists of the following standards paragraphs: A5, A7, A9, B, C & D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.



Applicant estimates that the cost of the studies under permit would be \$155,000.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9725-000.

c. Date Filed: December 26, 1985.

d. Applicant: Birch Power Company.

e. Name of Project: Blackfoot Canyon.

f. Location: On lands administered by the Bureau of Land Management, on the Blackfoot River, in Bingham County, Idaho. Township 3 S, Range 38 E.

g. File Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. Ted S. Sorenson, 550 Linden Drive, Idaho Falls, ID 83401, (208) 522-8069.

i. Comment Date: May 19, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high embankment dam at elevation 5,090 feet; (2) an 8,200-foot-long, 96-inch-diameter pipeline; (3) a powerhouse containing 2 generating units with a combined capacity of 9.9 MW and an average annual generation of 36,000 MWh; and (4) a 5.0-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 24 months during which it would conduct engineering and environmental feasibility studies and prepare a FERC license application at a cost of \$45,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold to Utah Power and Light.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 9588-000.

c. Date Filed: November 1, 1985.

d. Applicant: Elk Refuge Preservation Group.

e. Name of Project: Jackson Pipeline.

f. Location: On Flat Creek, a tributary of the Gros Ventre River near Jackson, Teton County, Wyoming.

g. File Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. Louis Rosenman, Suite 1100, 1333 New Hampshire Ave. NW., Washington, DC 20036, (202) 783-2100.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high diversion dam at elevation 6,385 feet; (2) an existing 4,251-foot-long penstock; (3) a power house containing one generating unit with a rated capacity of 1,425 kW; and (4) a 30,800-foot-long transmission line. Applicant

estimates the average annual energy production to be 42 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare a FERC license application at a cost of \$145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The proposed power produced is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9552-000.

c. Date Filed: October 24, 1985.

d. Applicant: Deferiet Corporation.

e. Name of Project: Champion.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170; (212) 986-0440.

i. Comment Date: May 14, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Black River Project No. 2569, which includes: (1) An existing Ambursen concrete dam 522 feet long and 18 feet high; and (2) an existing impoundment 70 acres in surface area with a storage capacity of 650 acre-feet at a normal maximum surface elevation of 659 feet mean sea level. The proposed project would consist of: (1) A proposed intake/powerhouse structure of reinforced concrete, 100 feet long and 80 feet wide; (2) a proposed excavated intake channel 220 feet long, 80 feet wide, and 30 feet deep; (3) two proposed turbine/generator units of 2.35 MW capacity each; (4) a proposed 23 kV transmission line 1600 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 9,000,000 kWh. The net hydraulic head is 19 feet. Project power would be sold to Niagara Mohawk Power Corporation. The dam is owned by Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of

preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$160,000.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9557-000.

c. Date Filed: October 24, 1985.

d. Applicant: Black River Hydro Corporation.

e. Name of Project: North Black River.

f. Location: Black River, Jefferson County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).

h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, NY 10170, (212) 986-0440.

i. Comment Date: May 14, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Black River Project No. 2569, which includes: (1) An existing concrete gravity dam, 295 feet long and 25 feet high, a section of which is to be demolished; and (2) an existing impoundment 25 acres in surface area with a storage capacity of 320 acre-feet at a normal maximum surface elevation of 534 feet mean sea level. The proposed project would consist of: (1) A proposed reinforced concrete intake/powerhouse structure 100 feet long and 80 feet wide; (2) a proposed excavated intake channel 170 feet long, 80 feet wide, and 30 feet deep; (3) two proposed turbine/generators of 2.8 MW capacity each; (4) a proposed 23 kV transmission line 250 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 12,000,000 kWh. The net hydraulic head is 19 feet. Project Power would be sold to Niagara Mohawk Power Corporation. The dam is owned by Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the



preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$160,000.

18 a. Type of Application: Preliminary Permit.

- b. Project No.: 9714-000.
- c. Date Filed: December 23, 1985.
- d. Applicant: Mr. Franklin Springer.
- e. Name of Project: Springer Hydro Development No. 2.
- f. Location: On McFadden, Morrison, and Pine Creeks, tributaries of the Arkansas River, near Buena Vista, in Chaffee County, Colorado.
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).
- h. Contact Person:

Mr. Franklin Springer, Route 1, Box 380, Buena Vista, CO 81211, (303) 395-2364.

Mr. Karl F. Kumli III, Attorney at Law, P.O. Box 2279, Boulder, CO 80306, (303) 440-0075.

- i. Comment Date: May 14, 1986.
- j. Description of Project: The proposed project would consist of: (1) An existing headgate on an open ditch structure originating at Pine Creek at elevation 9,760 feet msl; (2) the existing 1.2-mile-long Anderson Ditch; (3) a proposed 1.2-mile-long pipeline intersecting the Anderson Ditch at elevation 9,600 feet msl; (4) a 20-inch-diameter, 3,500-foot-long penstock intersecting the pipeline at a point which is 2,000 feet south of the north line and 1,200 feet east of the west line of Section 33, T12S, R79W, 6th P.M., Harvard Lakes Quadrangle; (5) a 10-foot-high, 20-foot-long, 8-foot-wide powerhouse containing a single impeller pump-generator unit with an installed capacity of 90 kW, operating under a head of 640 to 800 feet and a hydraulic capacity of 10 cfs, and producing an estimated average annual generation of 613,000 kWh; a 24-inch-diameter, 125-foot-long pipe tailrace discharging water to McFadden Creek at elevation 8,800 feet msl; and (7) a 1,050-foot-long, 480 volt transmission line interconnecting the project to an existing Colorado-Ute Electric Association, Inc. line. Project power would be located sold to Colorado-Ute Electric Association, Inc. The project would be located in private and San Isabel National Forest lands in Sections 28 and 33, T12S, R79W, 6th P.M., Harvard Lakes Quadrangle.

A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant

would decide whether to proceed with an application for development. Applicant estimates that the cost of the studies under permit would be \$5,000.

- k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

19 a. Type of Application: Preliminary Permit.

- b. Project No: 9564-000.
- c. Date Filed: October 30, 1985.
- d. Applicant: Norwood Hydro Corporation.
- e. Name of Project: West Norwood.
- f. Location: Raquette River, St. Lawrence County, New York.
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)-825(r).
- h. Contact Person: Mr. Paul J. Elston, 420 Lexington Avenue, Suite 440, New York, New York 10170, (212) 986-0440.
- i. Comment Date: May 16, 1986.

j. Description of Project: The proposed project would develop the unutilized capacity at the licensed Raquette River Project No. 2330 which includes (1) An existing concrete gravity dam 188 feet long and 23 feet high; and (2) an existing impoundment 350 acres in surface area with a storage capacity of 4000 acre-feet at a normal maximum surface elevation of 327 feet mean sea level. The proposed project would consist of: (1) A proposed reinforced concrete intake/powerhouse structure 110 feet long and 70 feet wide; (2) a proposed excavated intake channel 180 feet long, 110 feet wide, and 30 feet deep; (3) two proposed turbine/generator units of 2.2 MW capacity each; (4) a proposed 23 kV transmission line 650 feet long; and (5) appurtenant facilities.

The estimated annual energy production is 5,000,000 kWh. The net hydraulic head is 19 feet. Project power would be sold to Niagara Mohawk Power Corporation. The owner of the dam is Niagara Mohawk Power Corporation.

- k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies, and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$160,000.

20 a. Type of Application: Preliminary Permit.

- b. Project No: 9593-000.
- c. Date Filed: November 1, 1985.
- d. Applicant: Pollock City Conservationists.
- e. Name of Project: Upper Hat Creek.
- f. Location: On lands administered by the Bureau of Land Management on Hat Creek, in Idaho County, Idaho. Township 23 N, Range 1 E.
- g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)-825(r).
- h. Contact Person: Louis Rosenman, LeBoef, Lamb, Lieby, McRae, Suite 1100, 1333 New Hampshire Avenue, Washington, DC 20036, (202) 783-2100.
- i. Comment Date: May 16, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 5,200 feet; (2) a 12,000-foot-long, 20-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 3491 kW and an average annual generation of 7.41 GWh; and (4) a 3,500-foot-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of 145,000. No new roads would be constructed or drilling conducted during the feasibility study.

- k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

Standard Paragraphs

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or



notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

**A5. Preliminary Permit**—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

**A7. Preliminary Permit**—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

**A8. Preliminary Permit**—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

**A9. Notice of intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be

filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

**B. Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of practice and procedure, 18 CFR §§385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**C. Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**D1. Agency Comments**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does

not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**D2. Agency Comments**—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must be sent to the Applicant's representatives.

**D3a. Agency Comments**—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**D3b. Agency Comments**—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that



agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 7, 1986.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 86-8061 Filed 4-9-86; 8:45 am]

BILLING CODE 5717-01-M

[Project No. 2100-029 et al.]

**Hydroelectric Applications (State of California Dept. of Water Resources et al.); Application Filed With the Commission**

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

a. Type of Application: Amendment of License.

b. Project No.: 2100-029.

c. Date Filed: January 15, 1986.

d. Applicant: State of California Department of Water Resources.

e. Name of Project: Feather River Project.

f. Location: On the Feather River in Butte County, California.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Viju Patel, Chief, Energy Division, Department of Water Resources, P.O. Box 388, Sacramento, CA 95802, (916) 445-6687.

i. Comment Date: May 19, 1986.

j. Description of the Proposed Action: Applicant requests removal of an unconstructed 800-foot-long, 12-kV transmission line from its license for Project No. 2100. The unconstructed transmission line would have connected the project's Thermalito Diversion Dam Powerplant (currently under construction) with an existing Pacific Gas and Electric Company line. Applicant further requests authorization to construct two underground, 15-kV transmission lines, 3.9-mile-long and 1.1-mile-long, connecting the Thermalito Diversion Dam Powerplant with the Applicant's existing upstream Edward Hyatt Switchyard and the downstream

Feather River Fish Hatchery, respectively.

k. This notice also consists of the following standard paragraphs: B and C.

2 a. Type of Application: Transfer of Major License.

b. Project No.: 2251-001.

c. Date Filed: November 22, 1985.

d. Applicant: New England Fish Company (licensee) and Prince William Sound Aquaculture Corporation (transferee).

e. Name of Project: San Juan Lake and Creek.

f. Location: On San Juan Lake and Creek on Evans Island in Prince William Sound near Cordova, Alaska partially on lands of the United States in the Chugach National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Brian J. Allee, President, Prince William Sound Aquaculture Corporation, P.O. Box 1110, Cordova, Alaska 99574 and Mr. Sam Rubinstein, Trustee, New England Fish Company, Pier 89, Seattle, Washington 98119.

i. Comment Date: May 27, 1986.

j. Description of Transfer: On November 22, 1985, New England Fish Company (licensee) and Prince William Sound Aquaculture Corporation (transferee), filed a joint application for transfer of major license for the San Juan Lake and Creek Project No. 2251.

The purpose of the proposed transfer of the license is to facilitate the rehabilitation of the San Juan Lake and Creek Project which was originally licensed on May 8, 1959, and has been inoperative since 1980. The transferee intends to comply fully with the conditions of the license.

The transferee is a private, nonprofit corporation, organized under the laws of the State of Alaska, and domesticated in the State of Alaska. The transferee submits that it will comply with all applicable laws of the State of Alaska as required by section 9(b) of the Federal Power Act.

k. This notice also consists of the following standard paragraphs: B and C.

3 a. Type of Application: Transfer of License.

b. Project No.: 3240-004.

c. Date Filed: March 5, 1986.

d. Applicant: Briar Hydro Associates and New Hampshire Water Resources Board.

e. Name of Project: Rolfe Canal Project.

f. Location: On the Contoocook River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. David B. Ward, 1000 Potomac Ave., Suite 402, Washington, DC 20007, (202) 293-6910.

i. Comment Date: May 21, 1986.

j. Description of Proposed Transfer: On December 5, 1984, a license was issued to Briar Hydro Associates (licensee), to construct, operate, and maintain, the Rolfe Canal Project No. 3240. The licensee intends to add the New Hampshire Water Resources Board as a co-licensee in order to facilitate the operation of project. The licensee has complied with the terms and conditions of the license. Construction of the project has not begun. The Transferee has agreed to accept all the terms and conditions of the license and the requirements of the Federal Power Act and to be bound by it as it would the original licensee.

k. This notice also consists of the following standard paragraphs: B and C.

4 a. Type of Application: Preliminary Permit.

b. Project No.: 9533-000.

c. Date Filed: October 9, 1985.

d. Applicant: Duck River Renovation Hydro Partners.

e. Name of Project: Old Columbia Dam.

f. Location: On the Duck River near Columbia, Maury County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Louis Rosenman, LeBoeuf, Lamb, Leiby, and McCrae, 1333 New Hampshire Ave., NW, Suite 1100, Washington, DC 20036, (202) 457-7500.

i. Comment Date: May 19, 1986.

j. Competing Application: Project No. 9499-000. Date Filed: October 1, 1985. Competing Due Date: May 22, 1986.

k. Description of Project: The proposed project would consist of: (1) An existing dam approximately 572 feet long and 22 feet high; (2) an existing 15-acre reservoir with a storage capacity of 20 acre-feet at a surface elevation of 673 msl; (3) an existing masonry powerhouse approximately 100 feet by 110 feet housing a proposed 730-kW generator; (4) a proposed 12.5-kV transmission line approximately 450 feet long; and (5) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 4.4 GWh. All project energy would be sold to the City of Columbia or the TVA. The dam is owned by the City of Columbia, Tennessee.

l. This notice also consists of the following standard paragraphs: A8, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The



term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$145,000.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 9928-000.

c. Date Filed: March 3, 1986.

d. Applicant: WV Hydro Corp.

e. Name of Project: Bailey.

f. Location: Guyandotte River, Mingo and Wyoming Counties, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. James B. Price, WV Hydro Corporation, 120 Calumet Ct., Aiken, SC 29801, (803) 648-0276.

i. Comment Date: May 23, 1986.

j. Competing Application: Project No. 9950, Date Filed: March 21, 1986.

k. Description of Project: The proposed project would use the existing R.D. Bailey Dam and Lake, owned and operated by the U.S. Army Corps of Engineers, and would consist of: (1) A new 2,400-foot-long penstock 8 feet in diameter; (2) a concrete powerhouse approximately 40 feet wide and 47 feet long; (3) two new turbine-generators of 3.5-MW capacity each; (4) a new 138-kV transmission line 5.8 miles in length; and (5) appurtenant facilities.

The estimated annual energy production is 35 million kWh. The hydraulic head is 125 feet. Project power would be sold to Virginia Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$100,000.

6 a. Type of Application: Minor License.

b. Project No: 9319-000.

c. Date Filed: July 2, 1985.

d. Applicant: Keith and Marilyn Peterson.

e. Name of Project: Circle Arrow.

f. Location: On Clearwater River in Missoula County, Montana near the town of Sealey Lake T17N R15W Section 8.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John W. Kraft, Dextor Horton Building, Suite 1190, Seattle, Washington 98104, (206) 622-6810; Keith & Marilyn Peterson, 2615-43rd St., West, Seattle, Washington 98199, (206) 285-4488.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing 7-foot-high, 53-foot-long Lake Inez Fish Barrier at elevation 4,017 feet; (2) four generating units mounted on the northeast side of the existing Barrier with a total rated capacity of 160 kW, producing an estimated average annual energy output of 775,000 kWh; (3) a tailrace discharging project flows into the Clearwater River; and (4) a 1,000-foot-long, 24.9-kV transmission line tying into a Missoula Electric Cooperative line at Benedict Creek.

The estimated cost of the project in 1985 dollars is \$286,000.

k. Purpose of Project: Project power would be sold to Missoula Electric Cooperative.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7 a. Type of Application: Major License.

b. Project No.: 5222-003.

c. Date Filed: November 29, 1985.

d. Applicant: South Sutter Water District.

e. Name of Project: Garden Bar Dam and Reservoir Water Power Project.

f. Location: On Bear River partly on U.S. lands managed by the Bureau of Land Management in Placer and Nevada Counties, California:

Sections	Township	Range
24 and 25	T14N	R6E.
19, 29, 30, 31, 32, 33, 34 and 35	T14N	R7E.
3, 4, 5 and 6	T13N	R7E MDMB.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert L. Melton, General Manager, South Sutter Water District, 2464 Pacific Avenue, Trowbridge, CA 95659, (916) 656-2243; Mr. W. Wesley Jopson, President, Board of Directors, South Sutter Water District, 2464 Pacific Avenue, Trowbridge, CA 95659.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A 332-foot-high, 2,200-foot-long earth and rockfill main dam at elevation 627.5 feet; (2) a 75-foot-high, 1,500-foot-long earth and rockfill dike, approximately 3,500 feet northwest of the main dam, at elevation 627.5; (3) a 105-foot-high, 1,750-foot-long earth and rockfill dike, approximately 6,700 feet north of the main dam, at elevation 627.5 feet; (4) a reservoir, formed by the main dam and two dikes, with gross storage capacity of 250,000 acre-feet and surface area of 2,000 acres at elevation 612.0 feet; (5) an intake structure, within the reservoir, approximately 550 feet east of the south abutment of the main dam; (6) a 27-foot-diameter, 1,650-foot-long power tunnel; (7) a powerhouse to contain three generating units with combined rated capacity of 78,650 kW operating under a head of 312 feet; (8) a 1.3-mile-long, 115-kV transmission line will connect the powerhouse with an existing Pacific Gas and Electric Company's line north of the project. Applicant estimates the construction cost of the project at \$161.4 million.

k. Purpose of Project: The project's estimated annual generation of 107 million kWh will be sold to Sacramento Municipal Utility District.

l. This notice also consists of the following standard paragraphs: A3, A9, B&C.

8 a. Type of Application: License.

b. Project No.: 9194-000.

c. Date Filed: May 16, 1985.

d. Applicant: Passaic Valley Water Commission.

e. Name of Project: Little Falls.

f. Location: On the Passaic River in Passaic County, New Jersey.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Wendell R. Inhoff, General Superintendent and Chief Engineer, Passaic Valley Water Commission, 1525 Main Avenue, Clifton, New Jersey 07015, (201) 772-3900.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Beatties Mill Dam, which has an overall length of approximately 287 feet and a maximum height of 11.5 feet; (2) the existing 100-acre reservoir which has a storage capacity of 300 acre-feet; (3) the 4 existing 600 kW generating units are located in the High Service Pumping Station, owned and operated by the Applicant; (The powerplant is designed to provide power to the pumping station. The existing powerhouse was constructed with a fifth turbine bay for future expansion.) (4) the proposed



installation of a 700 kW generating unit; (5) the existing 26-foot-wide by 85-foot-long gatehouse; (6) an existing, approximately 75-foot-wide, 1,300-foot-long canal; (7) a existing 12-foot-diameter, 250-foot-long penstock; (8) an existing penstock composed of a 100-foot-long, 12-foot-diameter section and a 46-foot-long, 10-foot-diameter section; (9) the existing 2.4-kV generator leads; and (10) appurtenant facilities. The project would generate up to 13.4 GWh annually.

k. All existing project facilities are currently owned by: Beattie Manufacturing Co., 242 Main Street, Little Falls, New Jersey; and Passaic Valley Water Commission, 1525 Main Ave., Clifton, New Jersey 07015.

l. Purpose of Project: The Applicant proposes to utilize all of the power generated at the pumping station with no power sales proposed.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: Preliminary Permit.

b. Project No.: 9606-000.

c. Date Filed: November 4, 1985.

d. Applicant: Burlington Energy Development Associates.

e. Name of Project: Quequechan River.

f. Location: Quequechan River in Bristol County, Massachusetts.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John R.

Anderson, Burlington Energy Development Associates, 64 Blanchard Road, Burlington, MA 01803, (617) 229-6103.

i. Comment Date: May 22, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 25-foot-high, 20-foot-long concrete intake structure owned by the City of Fall River; (2) an existing reservoir with a surface area of 1,500 acres and a storage capacity of 7,500 acre-feet at water surface elevation 131 feet msl; (3) an existing 31-foot-high, 30-foot-wide, 168-foot-long gate structure; (4) an existing 96-inch-diameter, 2,600-foot-long and a 66-inch-diameter, 1,400-foot-long penstock; (5) a proposed powerhouse containing a generating unit with a rated capacity of 500 kW; and (6) a proposed 600-foot-long transmission line tying into the existing Eastern Edison Company system. The Applicant estimates a 1,000,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility,

environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be \$25,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 9729-000.

c. Date Filed: December 26, 1985.

d. Applicant: City of Grand Rapids, Michigan.

e. Name of Project: Grand Rapids Dam.

f. Location: On the Grand River in the City of Grand Rapids, Kent County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. John E. Fisher, Lawson-Fisher Associates, 525 West Washington Street, South Bend, IN 46601, (219) 234-3167.

i. Comment Date: May 21, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Grand Rapids Dam approximately 520 feet long and 8 feet high; (2) an existing 180-acre reservoir having a storage capacity of 900 acre-feet at an elevation of 606 feet MSL; (3) a new powerhouse located on the west abutment of the dam containing three turbine/generator units having a total installed capacity of 1,680 kW operating at a 8 feet of hydraulic head; (4) a new 6,500-foot-long 12.5-kV transmission line; and (5) appurtenant facilities. The Applicant estimates the average annual energy production to be 10 MWh. The Applicant is the owner of the project dam.

k. Purpose of Project: All project energy would be used by the City of Grand Rapids or sold to Consumer's Power.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

m. Proposed Scope of Studies under permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 36 months during which time Applicant would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.

Applicant estimates that the cost of the studies under permit would be \$66,500.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 9739-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Ashley Hydroelectric Project.

f. Location: On Halfway Creek near Fort Ann, Washington County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547; Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: May 21, 1986.

j. Description of Project: The proposed project would consist of: (1) Reconstruction of a diversion weir 50 feet wide, and three feet high, wooden flashboards two feet high will also be installed; (2) a proposed  $\frac{1}{10}$  acre impoundment with less than  $\frac{1}{2}$  acre-feet of storage at a surface elevation of 196 msl; (3) a proposed 66-inch diameter steel penstock 500 feet long; (4) a proposed steel frame and metal powerhouse 20 feet in length and width, and 15 feet high housing two 500 kW generators for a total installed capacity of 1,000 kW; (5) a proposed excavated tailrace; (6) a proposed 4.16 kV transmission line 250 feet long; and (7) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 4.5 GWh. The project energy would be sold to Niagara Mohawk Power Corporation. The dam is owned by Niagara Mohawk Power Corporation, Syracuse, New York.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

1. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$40,000.

12. a. Type of Application: Preliminary Permit.



b. Project No: 9513-000.  
 c. Date Filed: September 30, 1985.  
 d. Applicant: Town of Winchendon, Massachusetts.  
 e. Name of Project: Whitney Pond Dam Project.  
 f. Location: On the Millers River in the Town of Winchendon, Worcester County, Massachusetts.  
 g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).  
 h. Contact Person: Mr. Kevin Paicos, Town Manager, Town Offices, 109 Front Street, Winchendon, MA 01475, (617) 297-0085.

i. Comment Date: May 22, 1986.  
 j. Description of Project: The proposed project would consist of: (1) An existing 562-foot-long, 25-foot-high stone masonry gravity dam with earth embankments; (2) a reservoir having a surface area of 248 acres, a storage capacity of 1,450 acre-feet, and normal water surface elevation of 978.5 feet m.s.l.; (3) a proposed 80-foot-long, 6-foot-diameter steel penstock; (4) a proposed powerhouse containing one generating unit with an installed capacity of 200 kW; (5) a proposed 20-foot-long, 2.4-kV transmission line; (6) and appurtenant facilities. The Applicant estimates the average annual generation would be 695,000-kWh. The existing dam and project facilities are owned by the Applicant.

k. Purpose of Project: All project energy generated would be sold to the Massachusetts Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months, during which time the Applicant would perform studies to determine the feasibility of the project. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under permit would be \$17,000.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 9904-000.  
 c. Date Filed: February 7, 1986.  
 d. Applicant: Savage Rapids Hydro Co.  
 e. Name of Project: Savage Rapids.  
 f. Location: At Savage Rapids Dam on the Rogue river, in Josephine County, Oregon. Township 36S and Range 5W.  
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).  
 h. Contact Person: Bart M. O'Keeffe, Mutual Energy Co., Inc., 3451 Longview

Drive, Suite 130, Sacramento, CA 95660, (916) 971-3717.

i. Comment Date: May 21, 1986.

j. Description of Project: The proposed project would utilize the Grants Pass Irrigation District's Savage dam and reservoir and consist of: (1) The existing 28-foot-high dam; (2) the existing reservoir with a 700-acre-foot storage capacity and a 50-acre surface area at pool elevation 970 feet; and (3) a powerhouse containing two generating units with a combined capacity of 2 MW and an average annual generation of 52 GWh.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of \$300,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 9740-000.

c. Date Filed: December 27, 1985.

d. Applicant: Taft Hydropower, Inc.

e. Name of Project: Caughdenoy Lock 23 Hydro Project.

f. Location: On the Oneida River near Clay in Onondaga and Oswego Counties, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Lawrence R. Taft, 10315 Caughdenoy Rd., Central Square, NY 13036, (315) 437-2547; Mr. Neal F. Dunlevy, Stetson Dale Engineering PC, 185 Genesee St., Utica, NY 13501, (315) 797-5800.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) The existing Taintor dam at Caughdenoy and a bypass canal and lock located 2.2 miles south of the dam; (2) an existing 51,200 acre impoundment with a storage capacity of 1.14 million acre-feet at a surface elevation of 369.9 msl; (3) a proposed 100 kW generator to be installed in a removable insert in the old stone lock located adjacent to the dam; (4) a proposed intake canal 125 feet wide and 200 feet long located on the north side of the bypass canal adjacent to Lock 23; (5) a proposed powerflume 125 feet wide, and 200 feet long housing five 200 kW bulb turbine-generators (the total proposed project capacity is 1,100 kW); (6) a proposed tailrace 125 feet wide, 8 feet deep, and 300 feet long; (7) a

proposed 13.2 kV transmission line 100 feet long at the dam and a proposed 13.8 kV transmission line 4 miles long at Lock 23; and (8) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 4.5 GWh. The project energy would be sold to Niagara Mohawk Power Corporation. The dam is owned by New York Department of Transportation, Division of Canals.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$35,000.

15 a. Type of Application: Preliminary Permit.

b. Project No.: P-9589-000.

c. Date Filed: November 1, 1985.

d. Applicant: Upper Slate Creek Conservationists.

e. Name of Project: Upper Slate Creek.

f. Location: In Nez Perce National Forest on Slate Creek in Idaho County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Louis Rosenman, 1333 New Hampshire Ave., Suite 1100, Washington, DC 20035.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2560 feet; (2) an 18,000-foot-long; 50-inch-diameter penstock; (3) a powerhouse containing one generating unit with a capacity of 4,400 kW and an average annual generation of 14.2 GWh; and (4) a 500-foot-high-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of \$145,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.



l. this notice also consists of the following standard paragraphs: A5, A7, A9, B, C, D2.

16 a. Type of Application: Preliminary Permit.

b. Project No.: 9499-000.

c. Date Filed: October 1, 1985.

d. Applicant: BAF Enterprises, Inc.

e. Name of Project: Old Columbia Dam.

f. Location: On Duck River at mile 133.53 near Columbia, Maury County, Tennessee.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Anthony J. Fant, P.O. Box 67, Crossville, AL 35962, (205) 683-2420.

i. Comment Date: May 22, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing concrete gravity dam 22 feet high and 572 feet long; (2) an existing 16-acre reservoir with a storage capacity of 20 acre-feet at a surface elevation of 673 msl; (3) an existing reinforced concrete powerhouse 46 feet long, 31 feet wide, and 65 feet high housing two proposed 500-kW generators for a total capacity of 1.0 MW; (4) an existing tailrace 90 feet wide, 15 feet deep, and 30 feet long; (5) a proposed 12.5-kV transmission line 400 feet long; and (6) appurtenant facilities. The Applicant estimates that the average annual energy generation would be 3.2 GWh. The project energy would be sold to the City of Columbia or the Tennessee Valley Authority. The dam is owned by the City of Columbia, Tennessee.

k. This notice also consisted of the following standard paragraphs: A5, A7, A9, B, C, D2.

l. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit is 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be \$25,000.

17 a. Type of Application: Preliminary Permit.

b. Project No.: 9905-000.

c. Date Filed: February 10, 1986.

d. Applicant: Robert W. Shaw.

e. Name of Project: Gilead.

f. Location: Androscoggin River, Town of Gilead, Oxford County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Robert W. Shaw, 4 Pleasant Street, P.O. Box 17, Colebrook, NH 03576, (603) 237-4358.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A new 372-foot long, 25-foot high timber crib dam; (2) a new 70 acre reservoir at elevation 695 feet M.S.L. with no usable storage capacity; (3) a new powerhouse located on the southern river bank with turbine-generators with a total rated capacity of 3 MW; (4) a new transmission line; and (5) appurtenant facilities. The project would generate up to 23,000,000 kWh annually.

k. Purpose of Project: Energy produced at the project would be sold to Central Maine Power Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope and Cost of Studies under Permit: A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months. The work performed under this preliminary permit would consist of gathering necessary data, completing surveys and environmental studies, obtaining necessary Federal, State and local permits, and preparing necessary documentation for the Commission's licensing requirements. Applicant estimates that the cost of works to be performed under the permit would not exceed \$44,000.

18 a. Type of Application: Preliminary Permit.

b. Project No.: 9686-000.

c. Date Filed: December 16, 1986.

d. Applicant: Adirondack Hydro Development Corporation.

e. Name of Project: Moose Falls.

f. Location: On the Moose River near Lyondale in Lewis County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Malcolm M. Preston, President, Wilbur W. Krueger, Exec. Vice President, Adirondack Hydro Development Corporation, Potsdam Industrial Plaza, Market Street, Potsdam, NY 13676, (315) 265-8090.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A proposed 5-foot-high, 300-foot-long dam; and (2) a proposed 4.5-acre reservoir which will include a storage capacity of 18 acre-feet at the normal maximum surface elevation of 1,082 feet MSL; (3) a proposed 10-foot-diameter 250-foot-long penstock; (4) a proposed powerhouse which will contain an installed

generating capacity of 670 kW; (5) a proposed 1,500-foot-long, 34.5 kV transmission line; and (6) appurtenant facilities.

The Applicant estimates that the average annual energy generation will be 4 GWh. The Applicant anticipates selling the project's power output to the Niagara Mohawk Power Corporation.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

l. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of 30 months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be \$110,000.

19 a. Type of Application: Preliminary Permit.

b. Project No.: 9669-000.

c. Date Filed: December 3, 1985.

d. Applicant: Copper Creek Associates.

e. Name of Project: Copper Creek.

f. Location: In Gifford Pinchot National Forest on Copper Creek, in Skamania County, Washington. Township 4N, Range 5E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Mike Graham, 484 East 300 North, Manti, UT 84642.

i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) A 10-foot-high diversion dam at elevation of 1,610 feet; (2) an 18,800-foot-long, 60-inch-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 2,210 kW and an average annual generation of 7,738,250 kWh; and (4) a 7-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of \$85,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: The power produced is proposed to be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.



20 a. Type of Application: Preliminary Permit.

b. Project No.: 9640-000.  
 c. Date Filed: November 25, 1985.  
 d. Applicant: Massachusetts Hydropower Incorporated.  
 e. Name of Project: Textile Printing Company Project.  
 f. Location: On the Swift River in Hampden and Hampshire Counties, Massachusetts.  
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).  
 h. Contact Person: Mr. Kenneth P. Lewis, President, Massachusetts Hydropower Incorporated, 104 Charles Street, #101, Boston, Massachusetts 02114, (617) 734-6389.  
 i. Comment Date: May 23, 1986.  
 j. Description of Project: The proposed project would consist of: (1) An approximately 121.5-foot-long existing dam with a maximum height of approximately 23 feet; (2) the proposed reinstallation of 1.5-foot-high flashboards; (3) an existing 200-acre reservoir with a storage capacity of 1,160 acre-feet, at the normal surface elevation of 363.7 feet (NGVD) which will be enlarged to a 240-acre reservoir with a storage capacity of 1,520 acre-feet at the normal surface elevation of 365.2 feet (NGVD) with the flashboards installed; (4) a proposed 50-foot-long, four-foot-diameter penstock; (5) a proposed powerhouse which contains an installed generating capacity of 150 kW; (6) a proposed 600-foot-long, 13.2 kV transmission line; and (7) appurtenant facilities.

The Applicant estimates that the average annual energy generation will be 750 MWh. The owner of the dam is Mr. Barry Endelson of White Plains, New York.

k. Purpose of Project: The Applicant anticipates selling the power available to either the New England Power Company, the Commonwealth Electric Company, the Fitchburg Gas & Electric Company, or the Mass. Municipal Wholesale Electric Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of twenty-four months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, Applicant would prepare an application for an FERC license. Applicant estimates the cost of the

studies under the permit would be \$10,000.00.

21 a. Type of Application: Preliminary Permit.

b. Project No.: 9855-000.  
 c. Date Filed: January 2, 1986.  
 d. Applicant: Squaw Creek Associates.  
 e. Name of Project: Squaw Creek.  
 f. Location: In Deschutes National Forest, on Squaw Creek, in Deschutes County, Oregon. Township 16S, Range 10E.  
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).  
 h. Contact Person: Jordan Walker, 484 East 300 North, Manti, UT 84642.  
 i. Comment Date: May 22, 1986.  
 j. Description of Project: The proposed project would consist of: (1) A 7-foot-high diversion dam at elevation 4,200 feet; (2) a 14,000-foot-long, 4-foot-diameter penstock; (3) a powerhouse containing a generating unit with a capacity of 3,500 kW and an average annual generation of 22 GWh; and (4) a 2-mile-long transmission line.

A preliminary permit does not authorize construction. Applicant seeks issuance of a preliminary permit for a term of 36 months during which it would conduct engineering and environmental feasibility studies and prepare an FERC license application at a cost of \$19,000. No new roads would be constructed or drilling conducted during the feasibility study.

k. Purpose of Project: Project power would be sold.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C and D2.

22 a. Type of Application: Preliminary Permit.

b. Project No.: 9817-000.  
 c. Date Filed: December 31, 1985.  
 d. Applicant: Cash Flow Systems.  
 e. Name of Project: Ausable.  
 f. Location: Ausable River in Essex and Clinton Counties, New York.  
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).  
 h. Contact Person: Mr. Lawrence R. Taft, 10315 Caughdenoy Road, Central Square, NY 13036, (315) 437-2547.  
 i. Comment Date: May 23, 1986.  
 j. Description of Project: The proposed project would consist of: (1) Reconstruction of the existing 8-foot-high, 160-foot-long concrete dam owned by the Village of Keeseville with a crest elevation of 380 feet msl; (2) a proposed reservoir with a surface area of 3 acres and a storage capacity of 15 acre-feet; (3) a proposed 10-foot-diameter, 230-foot-long penstock; (4) a proposed powerhouse containing a generating unit with a rate capacity of 1,500-kW; and (5) a proposed 50-foot-long transmission

line tying into the existing New York State Electric and Gas Company system. The Applicant estimates a 5,200,000 kWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending on the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates that the cost of the studies under permit would be \$21,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

23 a. Type of Application: Preliminary Permit.

b. Project No.: 9697817-000.  
 c. Date Filed: December 18, 1985.  
 d. Applicant: Savage Hydro Associates.  
 e. Name of Project: Savage River Dam.  
 f. Location: Savage River in Garrett County, Maryland.  
 g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).  
 h. Contact Person: Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite 409, Annapolis, MD 21403, (301) 268-8820.  
 i. Comment Date: May 23, 1986.

j. Description of Project: The proposed project would consist of: (1) An existing 184-foot-high, 1,050-foot-long concrete dam owned by the Upper Potomac River Commission with a crest elevation of 1,498 feet msl; (2) an existing reservoir with a surface area of 300 acres and a gross storage capacity of 20,000 acre-feet; (3) an existing 10-foot-diameter, 1,170-foot-long tunnel; (4) a proposed 800-foot-long steel liner; (5) a proposed 6-foot-diameter, 200-foot-long penstock; (6) a proposed powerhouse containing a generating unit with a rated capacity of 2,000 kW; and (7) a proposed 700-foot-long transmission line tying into the existing Potomac Edison Company system. The Applicant estimates a 10 GWh average annual energy production.

k. Proposed Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit to investigate project design alternatives, financial feasibility, environmental effects of project construction and operation, and project power potential. Depending on the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license.



Applicant estimates that the cost of the studies under permit would be \$35,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

#### Standard Paragraphs

**A3. Development Application**—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

**A4. Development Application**—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications or notices of intent to file competing development applications, must be filed in response to and in compliance with the public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

**A5. Preliminary Permit**—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

**A7. Preliminary Permit**—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later

than 120 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

**A8. Preliminary Permit**—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

**A9. Notice of Intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

**B. Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**C. Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's

regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**D1. Agency Comments**—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments with the Commission within the time set for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**D2. Agency Comments**—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**D3a. Agency Comments**—The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency



letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**D3b. Agency Comments—**The U.S. Fish and Wildlife Service and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protest any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments with 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 8, 1986.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-8062 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP86-407-000 et al.]

**Algonquin Gas Transmission Co. et al.; Natural Gas Certificate Filings**

Take notice that the following filings have been made with the commission.

**1. Algonquin Gas Transmission Company**

[Docket No. CP86-407-000]

April 4, 1986.

Take notice that on March 28, 1986, Algonquin Gas Transmission Company (Algonquin Gas), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP86-407-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon service to all customers under its Rate Schedule SNG-1, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin Gas states that, pursuant to a stipulation and agreement with sixteen of its synthesized natural gas (SNG) customers filed jointly with the subject abandonment application and when approved by the Commission, it would abandon its SNG service and cancel Rate Schedule SNG-1 and related service agreements effective March 31, 1986. Algonquin Gas states that the stipulation and agreement would permit the termination of the SNG service one year earlier than previously contemplated, as lower cost gas is now available to the SNG customers.

Algonquin Gas states that the stipulation and agreement provides for total liquidation payments by the SNG customers of \$5,000,000, over and above payments for Rate Schedule SNG-1 service during the 1985-86 SNG delivery season, subject, however, to contingent refunds, primarily to reflect reductions in liquidation costs, if any, related to the sale or demolition of the on-side facilities. Algonquin Gas states that the liquidation payment is materially lower than payments that would otherwise be required under the SNG service agreements.

Comment date: April 28, 1986, in accordance with Standard Paragraph F at the end of this notice.

**2. El Paso Natural Gas Company**

[Docket No. CP86-371-000]

April 4, 1986.

Take notice that on March 10, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP86-371-000 a request pursuant to section 157-205 of the Regulations under the Natural Gas Act (18 CFR 157-205) for authorization to install and operate a sales tap and valve assembly to be located in Mojave County, Arizona, in order to permit the delivery of natural gas to Southern Union Gas Company (SUG) for resale to consumers in the proposed residential

Hualapai Foothill Subdivision under the certificate issued in Docket No. CP82-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

The request states that El Paso presently sells and delivers natural gas to SUG for distribution and resale to consumers situated in various communities and areas in Arizona pursuant to a service agreement, dated February 1, 1970, between El Paso and SUG.

The request states that El Paso has received a written request from SUG for natural gas service at a location on El Paso's existing 4½-inch O.D. Kingman line in Mohave County, Arizona. El Paso states it has been advised by SUG that the requested quantities of natural gas would be utilized to serve residential space heating natural gas requirements of consumers in the proposed Hualapai Foothill subdivision located in Mohave County, Arizona.

El Paso proposes to install one 1-inch O.D. tap and valve assembly on El Paso's existing 4½-inch O.D. Kingman line. El Paso states SUG has advised that SUG intends to install other related facilities, as needed, including approximately 6,821 feet of 2½-inch O.D. pipeline for ultimate distribution of the natural gas to the Hualapai Foothill Subdivision. It is further stated that SUG has projected that the estimated annual and maximum peak day deliveries required to serve the proposed Hualapai Foothill Subdivision during the third full year of service is 12,000 Mcf per year and 85 Mcf per day, respectively. El Paso estimates the cost of the Hualapai Tap would be \$2,800.

El Paso states that the additional quantities of natural gas to be delivered would be sold by El Paso to SUG for resale to the proposed residential Hualapai Foothill Subdivision in order to accommodate projected Priority 1 requirements. El Paso avers that the anticipated Priority 1 load growth, which has precipitated SUG's request for the proposed natural gas service, would not alter SUG's entitlements under El Paso's permanent allocation plan. Additionally, El Paso advises that the proposed sale of natural gas is permitted by and consistent with the high-priority load growth provisions set forth in section 11.5(b), *Growth Provision*, of the General Terms and Conditions contained in El Paso's FERC Gas Tariff, First Revised Volume No. 1.

Comment date: May 19, 1986, in accordance with Standard Paragraph G at the end of this notice.



**3. Northern Border Pipeline Company**

[Docket No. CP86-395-000]

April 4, 1986.

Take notice that on March 19, 1986, Northern Border Pipeline Company (Applicant), 2600 Dodge Street, Omaha, Nebraska 68131, filed in Docket No. CP86-395-000, an application pursuant to section 7 of the Natural Gas Act and Section 294.221 of the Commission's Regulations (1) for a blanket certificate of public convenience and necessity authorizing Applicant to transport natural gas in interstate commerce on behalf of others pursuant to Part 157 and Subpart G of Part 284 of the Commission's Regulations; (2) for approval of certain tariff sheets; (3) for permission and approval to abandon such service, as provided by Subpart G Part 284 of the Commission's Regulations; and (4) the grant of a waiver of §§ 284.7 (c)(3), (d)(1), (d)(2), and (d)(4) of the Regulations set forth in Part 284, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that because of its unique financing and its cost of service tariff, waivers of requirement concerning the use of projected units to design rates and the use of volumetric rates for firm service is necessary. Applicant further states that upon grant of the requested waivers and acceptance of the certificate, it would agree to comply with the conditions set forth in Subpart A of Part 284 of the Commission's Regulations. Applicant proposes new tariff sheets to supersede its Rate Schedule IT-1. Applicant proposes that the maximum rate to be charged for interruptible transportation service will be determined annually and would be based on Applicant's estimated cost of service; that all IT-1 revenues would be credited to the cost of service; and that the minimum rate will be one cent per 100 dekatherm-miles.

Comment date: April 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

**4. Southern Natural Gas Company**

[Docket No. CP86-392-000]

April 7, 1986.

Take notice that on March 18, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-392-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing it to transport gas on behalf of The Southeast Alabama Gas District

(Southeast Alabama), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Southeast Alabama in accordance with the terms and conditions of a transportation agreement between Southeast Alabama and Southern dated March 7, 1986. Southern states it has agreed to transport on an interruptible basis up to 7 billion Btu of gas per day purchased by Southeast Alabama from SNG Trading Inc. (SNG Trading), subject to the receipt of all necessary governmental authorizations. Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

Southern states that the transportation agreement provides for Southeast Alabama to cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system in onshore and offshore Louisiana. Southern explains that it would redeliver to Southeast Alabama at the Southeast Alabama Elmore County meter station, Elmore County, Alabama, and at the Highway 169 gate meter station, Lee County, Alabama, an equivalent quantity of gas, less 3.25 percent of such amount which would have been deemed to have been used as compressor fuel and company-use gas including system unaccounted-for gas losses), less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas, and less Southeast Alabama's *pro rata* share of any gas delivered for Southeast Alabama's account which is lost or vented for any reason.

Southern states that Southeast Alabama has agreed to pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Southeast Alabama under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Southeast Alabama do not exceed the daily contract demand of Southeast Alabama, the transportation rate would be 39.9 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Southeast Alabama under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate

Schedule OCD on such day to Southeast Alabama exceed the daily contract demand of Southeast Alabama, the transportation rate for the excess volumes would be 64.9 cents per million Btu.

Additionally, Southern would collect from Southeast Alabama the GRI surcharge of 1.35 cents per Mcf or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern also requests flexible authority to provide transportation from additional delivery points in the event Southeast Alabama obtains alternative sources of supply of natural gas. It is stated that the additional transportation service would be to the same redelivery points, the same recipient, and within the maximum daily transportation volume of gas as stated in the application. Furthermore, Southern would file a report providing certain information with regard to the addition of any delivery points.

Southern states that the transportation arrangement would enable Southeast Alabama to diversify its natural gas supply sources and to obtain gas at competitive prices. Also Southern would be able to obtain take-or-pay relief on the gas Southeast Alabama may obtain from Southern's suppliers.

Southern states Southeast Alabama has advised Southern that the gas to be transported pursuant to the agreement would be used to supply certain of its industrial customers which have the installed capability to utilize fuel oil. It is asserted that because of the recent precipitous decline in the prices of fuel oil, many of these industrial customers have switched to fuel oil for substantially all of their energy requirements. It is stated that Southeast Alabama has advised Southern that unless it is able to obtain the transportation services requested by Southern, it would be unable to offer natural gas to these customers at a price that is competitive with fuel oil. It is further stated that, as a result, these industrial customers would continue to utilize fuel oil to the maximum extent possible causing a corresponding loss of throughput on Southern's system. Southern avers, to the extent the transportation service proposed would enable Southeast Alabama, and ultimately its customers, to obtain access to competitively priced natural gas, the entire Southern system would benefit by retaining Southeast Alabama as a customer on the system.

Comment date: April 28, 1986, in accordance with Standard Paragraph F at the end of this notice.



**5. Southern Natural Gas Company**

[Docket No. CP86-400-000]

April 4, 1986.

Take notice that on March 21, 1986, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-400-000 an application pursuant to Section 7 of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas for Atlanta Gas Light Company (Atlanta), acting as agent for Engelhard Corporation (Engelhard), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to transport, on an interruptible basis, up to 20 billion Btu of natural gas per day on behalf of Atlanta, acting as agent for Engelhard, for a term of one year. It is stated that Atlanta, as agent for Engelhard, would purchase such gas from SNG Trading, Inc. It is explained that Applicant would receive the gas at existing points of interconnection on Applicant's system in Main Pass area Block 73, offshore Louisiana and in the Dexter field, Walthall and Marion Counties, Mississippi, and deliver it to Atlanta at the existing Macon area delivery point for further transportation to Engelhard's plants in Gardner, Gordon and McIntyre, Georgia.

Applicant states that Atlanta has agreed to pay the following transportation charge:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta do not exceed the daily contract demand of Atlanta, the transportation rate shall be 48.2 cents per million Btu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Atlanta under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to Atlanta exceed the daily contract demand of Atlanta, the transportation rate for the excess volumes shall be 77.6 cents per million Btu.

Applicant proposes to charge Atlanta the currently effective GRI surcharge. Applicant also proposes to retain 3.25 percent of the volume received for fuel use.

Applicant also requests flexible authority to provide transportation from

additional delivery points in the event Atlanta obtains alternative sources of supply of natural gas.

Applicant states that the transportation service would enable Engelhard to diversify its natural gas supply sources and to obtain gas at competitive prices. Applicant further states that Engelhard has the capability to utilize fuel oil and absent the requested transportation service Engelhard has advised that it would continue to utilize fuel oil causing a corresponding loss of throughput on Applicant's system. In addition Applicant states that it would obtain take-or-pay relief of the gas that Atlanta may obtain from Applicant's suppliers.

Comment date: April 25, 1986, in accordance with Standard Paragraph F at the end of this notice.

**6. Texas Gas Transmission Corporation**

[Docket No. CP85-794-001]

April 7, 1986.

Take notice that on March 17, 1986, Texas Gas Transmission Corporation (Texas Gas), P.O. Box, 1160, Owensboro, Kentucky 42302, filed in Docket No. CP85-794-001 an amendment to its pending application filed in Docket No. CP85-794-000 pursuant to Section 7 of the Natural Gas Act so as to reflect (1) elimination of the proposed decrease in contract demand of Columbia Gas Transmission Corporation (Columbia), (2) a change in the proposed sales rate schedule for service to Cincinnati Gas & Electric Company (CG&E) from Rate Schedule CD-4 to Rate Schedule G-4, (3) the addition of a fifth delivery point for the proposed new sales service to CG&E, and (4) a request that the service to CG&E be implemented no sooner than November 1, 1986, all as more fully set forth in the amendment which is on file with the Commission and open for public inspection.

Texas Gas states that, on August 19, 1985, it filed an application in Docket No. CP85-794-000 for authority to (1) sell natural gas to CG&E under Texas Gas' Rate Schedule CD-4 at an initial contract demand of 50,000 Mcf per day, (2) deliver the proposed volumes at four delivery points, and (3) reduce the contract demand applicable to Columbia from 290,708 Mcf per day to 243,828 Mcf per day. Texas Gas also proposed to abandon the sales service presently being rendered by Texas Gas to CG&E under Texas Gas' Rate Schedule SG-4.

It is stated that, in light of Columbia's opposition to the proposed reduction of its contract demand from Texas Gas, Texas Gas now proposes to withdraw its request to reduce Columbia's

contract demand. It is further stated that, at the time of the filing of the application, sales service to CG&E could only be proposed under Rate Schedule CD-4 since CG&E was not eligible to purchase under Rate Schedule G-4. Texas Gas explains that, subsequent to the filing of the original application, Texas Gas' tariff has been modified to eliminate the requirement that a purchaser under Rate Schedule G not purchase gas from any other natural gas company, thereby qualifying CG&E for service under Rate Schedule G-4.

Texas Gas states that, subsequent to the filing of the original application, Texas Gas had agreed to construct and install a meter station on its 26-inch main line system near the community of Fernald, in Hamilton county, Ohio, in order to deliver natural gas to CG&E under a July 3, 1984, gas transportation agreement pursuant to section 311(a)(1) of the Natural Gas Policy Act. Texas Gas states that the construction, though initiated, was not completed by October 9, 1985, and thus could not be utilized during the remaining term of the transportation agreement. Texas Gas requests that the Fernald meter station be added as a fifth delivery point for the sale CG&E. It is stated that the cost of the station is estimated at \$365,000 and would be financed by Texas Gas from funds on hand.

Finally, Texas Gas requests that any Commission order issued in Docket No. CP85-794-001 reflect that service to CG&E would commence no sooner than November 1, 1986.

Comment date: April 28, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.



Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing the protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an applicant for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,  
Secretary.

[FR Doc 86-8063 Filed 4-9-86; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[ORD-FRL-2999-4]

### Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR 7049, 41 FR 11255), has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) which utilizes a measurement

principle based on pulsed fluorescent detection of SO<sub>2</sub>.

The new designated method is: EQSA-0486-060, "Thermo Electron Instruments, Inc. Model 43A Pulsed Fluorescent Ambient SO<sub>2</sub> Analyzer," operated on the 0-100 ppb,\* the 0-200 ppb\*, the 0-500 ppb, or the 0-1000 ppb range with either a high or a low time constant setting and with or without any of the following options:

- 001 Teflon Particulate Filter Kit
- 002 Rack Mount
- 003 Internal Zero/Span Valves with Remote Activation
- 004 High Sample Flow Rate Option

\*Note.—Users should be aware that the designation of ranges less than 500 ppb are based on meeting the same absolute performance specifications required for the 0-500 ppb range. Thus, designation of these lower ranges does not guarantee commensurably better performance than that obtained on the 0-500 ppb range.

This method is available from Thermo Electron Instruments, Inc. 108 South Street, Hopkinton, Massachusetts 01748. A notice of receipt of application for this method appeared in the *Federal Register*, Volume 51, January 17, 1986, page 2565.

A test analyzer representative of this method had been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated equivalent method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 of Appendix C to 40 CFR

Part 58 (Modifications of Methods by Users).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR Part 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR Part 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD-77), U.S. Environmental Protection



Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above or by calling Larry Purdue at (919) 541-2665. Technical questions concerning the method should be directed to the manufacturer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not a major regulation because it imposes no additional regulatory requirements, but instead announces the designation of an additional equivalent method that is acceptable for use by states and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance or other applications where use of a reference or equivalent method is required.

This notice was exempted by the Office of Management and Budget for review as required by Executive Order 12291.

Donald J. Ehreth,  
Acting Assistant Administrator for Research and Development.

[FR Doc. 86-7941 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2998-2]

# **California Motor Vehicle Pollution Control Standards; Amendments Within the Scope of Previous Waivers of Federal Preemption; Summary of Determination**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of scope of waiver of Federal preemption.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its warranty regulations pertaining to 1983 and later model year passenger cars, light-duty vehicles, medium- and heavy-duty vehicles and motorcycles. These amendments provide for the following:

1. A reduction of the manufacturers' warranty liability from 5 years/50,000 miles to 2 years/24,000 miles for specific fuel metering and ignition system components in vehicles certifying to California's optional emission standards;

2. The addition of certain emissions-related parts to California's "Emissions Warranty Parts List"; and

3. Specification of warranty obligations under the newly created biennial vehicle inspection program.

I find these amendments to be within the scope of previous waivers of Federal preemption granted to California for its warranty regulations.

**ADDRESSES:** Copies of the California amendments at issue in this notice, a Decision Document containing an explanation of my determination, and documents used in arriving at this determination, are available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the Environmental Protection Agency, Central Docket Section, Gallery I, 401 M Street SW., Washington, DC 20460 (Docket EN-84-07). Copies of the Decision Document can be obtained from EPA's Manufacturers Operations Division by contacting Ms. McKnight as noted below.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Garrett McKnight, Attorney/Advisor, Manufacturers Operations Division (EN340-F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2521.

**SUPPLEMENTARY INFORMATION:** Under section 209(b) of the Clean Air Act, as amended (Act), the Administrator must waive Federal preemption for California's standards and accompanying enforcement procedures unless certain findings are made. If California acts to amend previously waived standards or enforcement procedures, the change may be included within the scope of the previous waiver if, (1) it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards; (2) the amendments do not affect the consistency of California's requirements with section 202(a) of the Act and (3) raise no new issues concerning EPA's previous waiver determinations.

California has previously received waivers of Federal preemption for its warranty regulations. In a letter dated December 5, 1983, the California Air Resources Board (CARB) requested EPA's concurrence in its view that certain new amendments to its warranty regulations fall within the scope of previous waivers of Federal preemption.

I have determined that CARB's amendments are within the scope of waivers previously granted pursuant to section 209(b) of the Act.<sup>1</sup> CARB's

amendments provide for the following: (1) A reduction of the manufacturers' warranty liability from 5 years/50,000 miles to 2 years/24,000 miles for specific fuel metering and ignition system components for vehicles certifying to optional standards under California Health and Safety Code § 43101.5(a); (2) the addition to California's "Emission Warranty Parts List" of sealing gaskets or devices and mounting hardware used in conjunction with emission-related components; (3) specification for repairs to be diagnosed and performed under warranty when a vehicle fails to comply with the requirements of the newly created biennial vehicle inspection program.

For reasons discussed in detail in the Decision Document, I find that these amendments do not undermine California's determination that its standards are, in the aggregate, at least as protective as Federal standards. Further, the amendments do not cause any inconsistency with section 202(a) of the Act and raise no new issues regarding previous waivers. Thus, the amendments meet the criteria for being considered within the scope of previous waiver decisions. (See 44 FR 61096 (October 23, 1979)).

An issue, separate from my determination under section 209, has arisen in relation to this "within the scope" determination. That issue is whether the Federal defect warranty (section 207(a) of the Act) applies in California despite the waiver of Federal preemption for California's warranty provisions. I have determined that EPA may enforce the Federal section 207(a) warranty requirements for California-certified vehicles which are affected by CARB's reduced warranty amendment. A full explanation of my determination is contained in the Decision Document, which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers located outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find, pursuant to section 307(b)(1) of the Act, that this decision is of nationwide scope and effect. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings

<sup>1</sup> 44 FR 61096 (October 23, 1979); and 37 FR 14831 (July 25, 1972).



brought by EPA to enforce these requirements.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291 for this "within the scope" determination since it is not a rule.

This action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), because the action is not required to undergo prior "notice and comment" under section 553(b) of the Administrative Procedure Act, or any other law. Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small entities.

Dated: March 26, 1986.

J. Craig Potter,

Assistant Administrator for Air and Radiation.

[FR Doc. 86-7944 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

[Docket No. ECAO-HA-83-4; ORD-FRL-2999-6]

#### Draft Health Assessment Document for Beryllium; Availability of Second External Review Draft

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of availability of second external review draft.

**SUMMARY:** This notice announces the availability of a second external review draft of the *Health Assessment Document for Beryllium*.

**DATES:** The Agency will make the document available for public review and comment on or about Monday, April 14, 1986. Comments must be postmarked by Friday, May 23, 1986.

**ADDRESSES:** To obtain a copy of the document, interested parties should contact the ORD Publications Center, CERL-FRN, U.S. Environmental Protection Agency, 26 W. St. Clair St., Cincinnati, OH 45268 (513) 569-7562, (FTS: 684-7562), and request the second external review draft of the *Health Assessment Document for Beryllium*. Please provide your name, mailing address, and the EPA document number, EPA-600/8/84/026B.

The draft document will also be available for public inspection and copying at the EPA library, EPA headquarters, Waterside Mall, 401 M Street SW., Washington, DC 20460.

Comments on the draft document should be sent to: Project Manager for Beryllium, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711.

**FOR FURTHER INFORMATION CONTACT:** Ms. Diane Ray, U.S. Environmental Protection Agency, Environmental Criteria and Assessment Office, MD-52, Research Triangle Park, NC 27711 (919) 541-3637, (FTS: 629-3637).

**SUPPLEMENTARY INFORMATION:** In March 1973, the Agency's Office of Air Quality Planning and Standards issued the document *Background Information on the Development of National Emission Standards for Hazardous Air Pollutants: Asbestos, Beryllium and Mercury* (APTD-1503). On April 6, 1973, the Agency promulgated national emission standards for these substances (38 FR 8826).

The Agency's current draft document on beryllium reviews and evaluates new health effects information available on this substance since 1973. The Agency issued a first external review draft for public comment from December 21, 1984, through February 22, 1985 (49 FR 49369) and held a Science Advisory Board meeting on the draft on June 4, 1985 (50 FR 20290). Comments received during the public comment period and recommendations made at the Science Advisory Board's meeting have been reviewed and incorporated, where appropriate, into the second external review draft. The document will become part of the Agency's decision-making process to review and to revise, as appropriate, the current emission standards for beryllium (40 CFR Part 61, Subparts c and d) under the Clean Air Act.

Dated: April 1, 1986.

Norbert Jaworski,

Acting Assistant Administrator for Research and Development.

[FR Doc. 86-7939 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140049A; FRL-3000-5]

#### Toxic and Hazardous Substances Control; Access to Confidential Business Information by Midwest Research Institute

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** EPA has authorized Midwest Research Institute (MRI) of Kansas City, Missouri for access to information which has been submitted to EPA under sections 4, 6, and 8 of the Toxic

Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

#### FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M Street SW., Washington, DC 20460. Toll-free: (800-424-9065). In Washington, DC: (554-1404). Outside the USA: (Operator-202-554-1404).

**SUPPLEMENTARY INFORMATION:** Under TSCA, EPA must determine whether the manufacture, processing, distribution in commerce, use, or disposal of certain chemical substances or mixtures may present an unreasonable risk of injury to human health or the environment. New chemical substances, i.e., those not listed on the TSCA Inventory of Chemical Substances, are evaluated by EPA under section 5 of TSCA. Existing chemical substances, i.e., those listed on the TSCA Inventory, are evaluated by the Agency under sections 4, 6, 7, and 8 of TSCA. In assessing the risk presented by a given chemical under review, EPA must estimate levels of human exposure to and environmental release of the chemical. Estimates used by the Agency are frequently derived through exposure assessment models. These models are sometimes translated into specific analytical guidelines which are used in developing OTS rulemaking packages.

Under Contract No. 68-02-3938, MRI, 425 Volker Boulevard, Kansas City, MO 64110, will assist the Agency in the development, review, and testing of the exposure assessment models described above for a wide variety of specific chemical compounds. This contract was previously announced in the *Federal Register* of April 26, 1984 (49 FR 18036). Under it, EPA tasked its contractor, MRI to review, test, and audit proposed alternative polychlorinated biphenyls (PCBs) destruction methods submitted by potential permittees under section 6 of TSCA. This notice announces that MRI's access has expanded to include CBI submitted under sections 4 and 8, as well as section 6.

In accordance with 40 CFR 2.306(j), EPA has determined that MRI will require access to CBI submitted to EPA under TSCA to successfully perform timely sampling and analysis of a wide variety of specific chemical compounds. Specifically MRI personnel will be given access to environmental fate and human exposure data reported to the Agency under sections 4 and 6 of TSCA. Also, MRI personnel will require access to comments submitted in response to



section 4 and section 8 rulemaking proposals. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under sections 4, 6, and 8 of TSCA that EPA may provide MRI access to these CBI materials at its facilities on a need-to-know basis. All access to TSCA CBI under this contract will take place at either EPA Headquarters or MRI. Upon completing review of the CBI materials, MRI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract is scheduled to expire on July 5, 1986.

MRI has been authorized for access to TSCA CBI at its facilities under the EPA "Contractor Requirements for the Control and Security of TSCA Confidential Business Information" security manual. EPA has approved MRI's security plan and has performed the required inspections of their facilities and has found them to be in compliance with the requirements of the manual. MRI personnel will be required to sign non-disclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

Dated: April 3, 1986

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 86-8006 Filed 4-9-86; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0138

Title: State Administrative Plan

Abstract: The State Administrative Plan is needed and used as an eligibility document for a State and its political subdivisions to receive up to 50% matching Emergency Management Assistance (EMA) funds from the Federal Emergency Management Agency (FEMA)

Type of Respondents: State or Local Governments

Number of Respondents: 56

Burden Hours: 1,120.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Date: April 4, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-7851 Filed 4-9-86; 8:45 am]

BILLING CODE 6718-01-M

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0120

Title: Implementation of Coastal Barrier Resources Act

Abstract: The information is used to document that structures on undeveloped coastal barriers are not new construction or substantial improvements of structures and are therefore not subject to the prohibitions of Flood Insurance mandated by the Coastal Barrier Resources Act.

Type of Respondents:

State of Local Governments

Individuals or households

Businesses or other for profit

Small businesses or organizations

Number of Respondents: 25

Burden Hours: 37.5.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: April 4, 1986.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 86-7852 Filed 4-9-86; 8:45 am]

BILLING CODE 6718-01-M

## [FEMA-761-DR]

### Amendment to Notice of a Major- Disaster Declaration; Montana

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the State of Montana (FEMA-761-DR), dated March 15, 1986, and related determinations.

**DATED:** April 4, 1986.

### FOR FURTHER INFORMATION CONTACT:

Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of Montana, dated March 15, 1986, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 15, 1986:

Dawson, Liberty, and Phillips Counties for Public Assistance.

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 86-7963 Filed 4-9-86; 8:45 am]

BILLING CODE 6718-02-M

## FEDERAL MARITIME COMMISSION

### Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Lybel Forwarding Co., Inc., 145-32 157th Street, Jamaica, NY 11434, Officers: Dolores A. Lynch, President/Treasurer/Director; Renee L. Beltran, Secretary/Director; Donald J. Wolfe, Executive Vice President/Director  
Surface Sea Forwarders, Inc., 2100 Alaskan Way, Seattle, WA 98121, Officers: Richard A. Banuelos, President; Philip Gronley, Vice



President/Director; Marilyn Corbit, Secretary/Treasurer/Director Berardino & Associates, Inc.; 221 East Lake Street, Suite 205; Addison, IL 60101. Officers: Thomas V. Berardino, President/Director; Thomas J. Berardino, Secretary/Director; Mary Beth Berardino, Treasurer/Director.

By the Federal Maritime Commission.

Dated: April 7, 1986.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 86-8004 Filed 4-9-86; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Fertility and Maternal Health Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration announces the renewal of the Fertility and Maternal Health Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. 1)).

**DATE:** Authority for this committee will expire on March 23, 1988, unless the Secretary formally determines that renewal is in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: April 4, 1986.

E. L. Brisson,

Acting Associate Director for Regulatory Affairs.

[FR Doc. 86-7953 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85D-0560]

#### Defect Action Levels for Adulteration of Certain Spices by Mold, Insect Filth, and Rodent Filth; Availability of Guides

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of FDA Compliance Policy Guides containing defect action levels (DAL's). Compliance Policy Guides 7109.01, 7109.04, 7109.16, and 7109.17

contain new food DAL's for insect and rodent filth in the ground and unground processed spices; allspice, cinnamon, nutmeg, and pepper, respectively. The agency has amended Compliance Policy Guide 7109.13 so that it no longer applies to whole unprocessed oregano, marjoram, thyme, and sage, and has established new Compliance Policy Guides 7109.23, 7109.24, 7109.25, and 7109.26 for these spices. These Compliance Policy Guides also contain the existing DAL's for the corresponding whole unprocessed leafy spice products deleted from Compliance Policy Guide 7109.13. These actions will provide for the uniform enforcement of the Federal Food, Drug, and Cosmetic Act.

**DATES:** Written comments, data, and information may be submitted by April 10, 1987. The new or revised Compliance Policy Guides 7109.01, 7109.04, 7109.13, 7109.16, 7109.17, 7109.23, 7109.24, 7109.25, and 7109.26 are effective for an interim period beginning February 1, 1986.

**ADDRESS:** Written comments, data, and information on these defect action levels and requests for single copies of the FDA Compliance Policy Guides should be submitted by April 10, 1987 to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed adhesive labels will assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:** Richard White, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0184.

**SUPPLEMENTARY INFORMATION:** Food DAL's provide FDA's field offices with uniform criteria for evaluating whether food is adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) and whether regulatory action should be recommended in a given instance. In this notice, the agency is announcing the availability of new or revised Compliance Policy Guides concerning DAL's for insect and rodent filth in ground and unground processed spices.

The new or revised guides are: 7109.01, whole and ground allspice; 7109.04, whole cassia or whole cinnamon and ground cinnamon; 7109.13, leafy spices, other than bay leaves; 7109.16, whole and ground nutmeg; 7109.17, whole and ground pepper; 7109.23, whole plant oregano, crushed oregano, and ground oregano; 7109.24, whole plant marjoram, unground marjoram, and ground marjoram; 7109.25, whole plant thyme, unground processed thyme, and ground

thyme; and 7109.26, whole plant sage and ground sage.

The new or revised DAL's are based on analytical data FDA obtained from a sampling of spices taken from retail grocery stores in 56 different metropolitan areas. The sampling was representative of the available brands and defects present in the marketplace nationally at the time of collection. Based on a six subsample average, the rejection rate resulting from the application of the new DAL's would be no more than approximately 4 percent in the case of each spice. Thus, there is little chance that a product will fail to meet the new or revised DAL's.

The agency invites interested persons to comment on the propriety of the DAL's. Interested persons should submit data and information in support of their comments. The agency will evaluate all comments, data, and information received and will announce formally through a Federal Register notice whether the DAL's will be continued or modified.

These new or revised DAL's are effective for an interim period beginning February 1, 1986. The DAL's will be changed only on the basis of data and information that adequately support such changes. The new or revised DAL's will remain in effect until FDA has evaluated all the available data and information and published its decision in the Federal Register.

Copies of the guides and supporting data and information are on file in FDA's Dockets Management Branch under the docket number found in brackets in the heading of this notice. Comments received by the Dockets Management Branch are available for examination in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-7955 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81D-0148]

#### Defect Action Levels for Canned Tomato Products; Availability of Guide

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the availability of revised FDA Compliance Policy Guide 7114.30 concerning examination of tomato products for contamination by mold. The revision



modifies the sample analysis instructions, and does not change the defect action level for mold in tomato products.

**DATES:** Written comments, data, and information may be submitted by April 10, 1987. The revised FDA Compliance Policy Guide 7114.30 is effective for an interim period beginning March 1, 1986.

**ADDRESS:** Written comments, data, and information on this revision of the compliance policy guide and requests for single copies of FDA Compliance Policy Guide 7114.30 should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. (Sending two self-addressed labels will assist the Branch in processing your requests.)

**FOR FURTHER INFORMATION CONTACT:** Raymond W. Gill, Center for Food Safety and Applied Nutrition (HFF-32), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0175.

**SUPPLEMENTARY INFORMATION:** The revision of Compliance Policy Guide 7114.30 will make evaluations concerning mold contamination consistent between tomato catsup and the other tomato products listed in Compliance Policy Guide 7114.30. In the Federal Register of April 8, 1985 (50 FR 13880), FDA announced that tomato catsup would be evaluated for mold contamination by analyzing six subsamples, and this revision of Compliance Policy Guide 7114.30 makes the same change for the remainder of the tomato products covered under Compliance Policy Guide 7114.30.

The revision of the guide is procedural in that only the number of subsamples to be examined is involved, and no revision is being made at this time in the defect action level for mold in tomato products. Because the revision is simply procedural, the revision of the guide will not change either the quality or availability of tomato products for consumers.

Requests for single copies of FDA Compliance Policy Guide 7114.30 should reference the docket number found in brackets in the heading of this document and should be submitted in writing to the Dockets Management Branch (address above).

The revised FDA Compliance Policy Guide 7114.30 is effective for an interim period beginning March 1, 1986. The guide will be changed only on the basis of data and information that adequately support such changes. The guide will remain in effect until FDA has evaluated all the available data and information

and has published its decision in the Federal Register.

Interested persons may, on or before April 10, 1987, submit to the Dockets Management Branch written comments, data, and information (preferably two copies and identified with the docket number found in brackets in the heading of this document) regarding revised FDA Compliance Policy Guide 7114.30. A copy of the guide and received comments are available for examination in that office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 3, 1986.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-7950 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86G-0122]

#### **Diamond Crystal Salt Co.; Filing of Petition for Affirmation of GRAS Status**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a petition (GRASP 6G0313) has been filed by Diamond Crystal Salt Co. proposing that *D*-α- and *DL*-α-tocopherols are generally recognized as safe (GRAS) for use as inhibitors of nitrosamine formation in dry-cured bacon.

**DATE:** Comments by June 9, 1986.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Carl Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-8950.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 6G0313) has been filed by Diamond Crystal Salt Co., St. Clair, MI 48079-1999. This petition proposes to affirm that *D*-α- and *DL*-α-tocopherols are GRAS for use as inhibitors of nitrosamine formation in dry-cured bacon.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the format requirements outlined in § 170.35 is filed by the agency. There is no pre-filing review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Interested persons may, on or before June 9, 1986, review the petition and/or file comments (two copies, identified with the docket number found in brackets in the heading of this document) with the Dockets Management Branch (address above). Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS. A copy of the petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 1, 1986.

Richard J. Rock,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86-7952 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0316]

#### **Sorin Biomedica, S.p.A.; Premarket Approval of AB-COREK (In Vitro Radioimmunoassay for Antibody to Hepatitis B Core Antigen in Serum or Plasma)**

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by SORIN BIOMEDICA, S.p.A., New York, NY, for premarket approval, under the Medical Device Amendments of 1976, of the AB-COREK (in vitro radioimmunoassay for antibody to hepatitis B core antigen (anti-HB<sub>c</sub>) in serum or plasma). After reviewing the recommendation of the Microbiology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.



**DATE:** Petitions for administrative review by May 12, 1986.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

**SUPPLEMENTARY INFORMATION:** On June 27, 1985, SORIN BIOMEDICA, S.p.A., New York, NY 10152, submitted to CDRH an application for premarket approval of the AB-COREK. The device is an in vitro radioimmunoassay for the detection of hepatitis B core antigen (recombinant DNA)/antibody to hepatitis B core antigen<sup>125I</sup> (human) intended for the qualitative measurement of antibodies to hepatitis B core antigen (anti-HB<sub>c</sub>) in human serum or plasma for use as an aid in the diagnosis of ongoing or previous hepatitis B virus infection.

On November 15, 1985, the Microbiology Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 28, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Joseph L. Hackett (HFZ-440), address above.

#### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d)(3)) authorizes any interested persons to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of

experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before May 12, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: April 1, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-7954 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-01-M

#### Advisory Committee; Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

**Meeting:** The following advisory committee meeting is announced:

#### The Ear, Nose, and Throat Devices Panel

*Date, time, and place.* June 16, 8:30 a.m., Rms. 703A-727A, Hubert H.

Humphrey Bldg., 200 Independence Avenue SW., Washington, DC.

*Type of meeting and contact person.* Open public hearing, 8:30 a.m. to 12 p.m.; open committee discussion, 1 p.m. to 4:30 p.m.; David A. Segerson, Center for Devices and Radiological Health (HFZ-470), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, Md 20910, 301-427-8185.

*General function of the committee.* The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the committee contact person before June 2, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open committee discussion.* The committee will discuss the clinical aspects of cochlear implants for both prelingually and postlingually deafened children. In particular, the committee will discuss the design of clinical trials necessary to demonstrate possible benefits of cochlear implantation.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures



for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: April 4, 1986.

E. L. Brisson,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 86-7951 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-01-M

## Public Health Service

### Assessment of Medical Technology; Hemoperfusion in Conjunction With Deferoxamine for Patients With End-Stage Renal Disease

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the clinical effectiveness, and appropriateness of hemoperfusion in

conjunction with deferoxamine for patients with end-stage renal disease who have signs or symptoms of aluminum toxicity or iron-overload. Specifically, this assessment seeks to determine: (1) The safety and efficacy of this treatment; (2) The patient selection criteria for initiating this treatment; (3) The experience with this form of therapy relative to other treatments for those conditions.

PHS assessments consist of a synthesis of information obtained from the public, appropriate organizations in the private sector as well as from PHS agencies and others in the Federal Government. The assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published controlled clinical trials and other well-designed clinical studies, and information related to the clinical acceptability and effectiveness of this technology. Proprietary information is not being sought.

Written materials should be submitted to: Harry Handelsman, D.O., Office of Health Technology Assessment, Park Building, Room 3-10, 5600 Fishers Lane, Rockville, MD 20857.

Dated: April 3, 1986.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-8044 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-17-M

### Assessment of Medical Technology; Reuse of Hemodialysis Devices Labeled For "Single Use Only"

The Public Health Service (PHS) through the Office of Health Technology Assessment (OHTA), within the National Center for Health Services Research and Health Care Technology Assessment (NCHSR&HCTA) announces that it is performing an assessment on what is known of the risks and/or benefits associated with the use of reprocessed hemodialyzers, blood lines, transducer filters and

dialyzer caps which are labeled by manufacturers for "single use only," and are reused in the treatment of patients undergoing chronic maintenance hemodialysis for end-stage renal disease.

Specifically, the assessment of the risks and/or benefits associated with reprocessing and reuse seeks to determine the following: (1) Is it safe and efficacious to reuse these devices under existing clinical and reprocessing practices?; (2) When reused under existing clinical and reprocessing practices, is there potential for dialysis patients to suffer infections or other short and/or long term adverse effects, associated with formaldehyde or other chemicals used in the reprocessing of dialysis devices?; (3) What is the extent of reuse of dialysis devices, including the dialyzer, blood lines, transducer filter and dialyzer caps?; (4) What guidelines and/or recommendations, if any, exist for the reprocessing and reuse of "single use only" dialyzers, blood lines, transducer filters and dialyzer caps?; (5) To what extent are such guidelines followed and/or defined as accepted medical practice?; (6) Are there any ethical considerations associated with the reprocessing and reuse of these devices?; (7) How does the cost of single use of each of these devices compare with the cost of reprocessing each of these devices?

PHS assessments consist of a synthesis of information obtained from the medical literature, appropriate organizations in the private sector as well as from PHS agencies, and others in the Federal Government. This assessment intends to incorporate the most current information concerning the safety and clinical effectiveness of the practices of reprocessing and reusing the subject dialysis devices. Any existing medical or industry guidelines regarding these practices will also be addressed. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than 60 days from the date of publication of this notice.

The information being sought concerns past, current, and planned research related to the practices of reprocessing and reuse of the dialysis devices listed above. A well-designed clinical studies, and information related to the clinical acceptability and effectiveness of these practices is also sought, along with recommendations on how to ensure safety and efficacy of these practices and to meet the needs of the dialysis patient, physician and clinic.



Written materials should be submitted to: Harry Handelsman, D.O., or Mr. Martin Erlichman, Office of Health Technology Assessment, Park Building, Room 3/10, 5600 Fishers Lane, Rockville, MD 20857 (301) 443-4990.

Dated: April 3, 1986.

Enrique D. Carter,

Director, Office of Health Technology Assessment, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 86-8043 Filed 4-9-86; 8:45 am]

BILLING CODE 4160-17-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AA-53593]

#### Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(e) and section 12(b)(6) of the Act of January 2, 1976, 43 U.S.C. 1611 nt., will be issued to Cook Inlet Region, Inc. for 172.224 acres. The lands involved are in the vicinity of Kasilof, Alaska.

U.S. Survey No. 3564, Alaska

Block 2, lots 1 and 9.

Seward Meridian, Alaska

T. 3 N., R. 11 W.

Sec. 30, lots 1 and 2, S $\frac{1}{2}$ N $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ .

T. 3 N., R. 12 W.

Sec. 25, lot 7 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ .

A notice of the decision will be published once a week, for four (4) consecutive weeks, in *The Anchorage Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 12, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E

shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-8008 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-55469]

#### Alaska Native Claims Selection; Cook Inlet Region, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(h)(6) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), as amended, 43 U.S.C. 1601, 1613(h)(6), will be issued to Cook Inlet Region, Inc., for the mineral estate, aggregating 1,310.85 acres, reserved to the United States in the Native allotments listed below.

Certificate of Allotment	Land Description	Acreage
50-73-0161	U.S. Survey 4520, Alaska, lot 1	158.84
50-75-0138	U.S. Survey 4547, Alaska	160.00
50-75-0184	U.S. Survey 4679, Alaska, lots 1 and 2.	41.29
Seward Meridian, Alaska		
50-74-0003	T. 17 N., R. 1 W., Sec. 6, SW $\frac{1}{4}$ NE $\frac{1}{4}$ , SE $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ SW $\frac{1}{4}$ .	160.00
50-74-0162	T. 18 N., R. 2 W., Sec. 11, SE $\frac{1}{4}$ .	160.00
50-73-0135	T. 14 N., R. 4 W., Sec. 1, lot 1	42.88
50-74-0179	T. 5 N., R. 8 W., Sec. 29, lot 2, NW $\frac{1}{4}$ SE $\frac{1}{4}$ .	59.55
50-73-0155	T. 5 N., R. 10 W., Sec. 35, lot 4.	36.03
50-75-0087	T. 5 N., R. 11 W., Sec. 1, lots 15, 16, and 17, Sec. 2, lots 1, 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$ .	155.05
50-74-0138	T. 7 N., R. 11 W., Sec. 28, lots 5 and 6, N $\frac{1}{2}$ NE $\frac{1}{4}$ .	137.21
50-74-0011	T. 5 S., R. 13 W., Sec. 27, NE $\frac{1}{4}$ .	160.00
50-73-0146	T. 6 S., R. 13 W., Sec. 9, NE $\frac{1}{4}$ NW $\frac{1}{4}$ .	40.00

A notice of the decision will be published once a week for four (4) consecutive weeks, in the *Anchorage Daily News*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 12, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E

shall be deemed to have waived their rights.

Olivia Short,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-7979 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-JA-M

[AA-14292, AA-6675-B]

#### Alaska Native Claims Selection; King Cove Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to The King Cove Corporation for approximately 210 acres. The lands involved are in the vicinity of King Cove, Alaska, within T. 60 S., R. 87 W., Seward Meridian, Alaska.

A notice of the decision will be published once in the *Aleutian Eagle*, and once a week for four (4) consecutive weeks in the *Anchorage Times*. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision shall have until May 12, 1986 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Helen Burleson,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 86-7992 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-JA-M

#### Oregon; Proposed Decision to Designate Eight Dollar Mountain as an Area of Critical Environmental Concern

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed designation of Eight Dollar Mountain as an area of critical environmental concern (ACEC).



**SUMMARY:** Pursuant to the authority in the Federal Land Policy and Management Act of October 21, 1976 (section 202 (c)(3)) and 43 CFR Part 1610 this is the proposed decision concerning the designation of Eight Dollar Mountain as an ACEC.

The Josephine Management Framework Plan (MFP) for the Bureau of Land Management (BLM) Medford District was completed in 1979. This land use plan did not include decisions regarding the designation of ACECs. The BLM decided to amend this land use plan to address possible ACEC designations. The plan amendment process was started with the publication of the Notice of Intent in the May 7, 1981, *Federal Register* and local newspapers. Proposed planning issues and criteria were published on August 20, 1981. Proposed alternatives were published for public review and comment on March 18, 1983. Public meetings were held during the planning process, which resulted in 15 areas being nominated for consideration. This proposed decision addresses the Eight Dollar Mountain area which was identified in the October 17, 1985, plan amendment and environmental assessment (EA) as an area meeting the criteria of eligibility for ACEC designation set forth in 43 CFR 1610.7-2(a).

Four alternatives were analyzed for the Eight Dollar Mountain potential ACEC, as listed:

- Alternative 1, ACEC Designation of 1,240.6 Acres (Preferred Alternative)
- Alternative 2, No Action—Current Management
- Alternative 3, Other Designation—National Natural Landmark
- Alternative 4, Modified Current Management

These alternatives and their management constraints were developed largely through a consensus process involving concerned citizens in the general area of Eight Dollar Mountain. The alternatives and management proposals for most resources are outlined in the plan amendment and environmental assessment.

The preferred alternative described in the Plan Amendment and Environmental Assessment for the proposed Eight Dollar Mountain ACEC of October 17, 1985, is the proposed decision:

The BLM's proposed decision is to designate the 1,240.6-acre Eight Dollar Mountain as an Area of Critical Environmental Concern for the purpose of protecting unique botanical values found there. Under the proposed decision, an interagency cooperative

management plan and memorandum of understanding would be developed and implemented. Leasable and saleable mineral permits and leases would be discretionary. The area would remain open for locatable entry subject to approved mining plans. The ACEC would be closed to off-road vehicle (ORV) use except for designated roads. Currently there is no timber harvest planned through the plan period. Opportunities for limited future uneven aged management will be studied. Livestock grazing would continue contingent upon protection of botanical values. Communication sites would not be authorized. Species would be protected under existing state and federal laws. Natural fires would be allowed under managed conditions.

#### **SUPPLEMENTARY INFORMATION:**

##### **Eight Dollar Mountain**

1,240.6 acres of BLM-administered land in T. 38 S., R. 8 W., parts or all of Sections 9, 15, 21, and 28, W.M., Josephine County, Oregon.

The lands proposed for ACEC designation are located southwest of Selma, on the east side of Eight Dollar Mountain, in Josephine County, Oregon. This includes portions of sections 9, 15, and 28, and all of section 21 in T. 38 S., R. 8 W., of the Willamette Meridian totalling 1,240.6 acres. The lands are part of the Eight Dollar Mountain area which encompasses about 4,440 acres of private and public lands in southwest Oregon.

Eight Dollar Mountain, one of the most significant botanical areas in Oregon, represents the major area of species endemism (plants specific to a certain locale) in the state. The mountain provides diversified habitats for eleven candidate species which are under review by United States Fish and Wildlife Service (USFWS) for listing as threatened or endangered.

These species represent almost nine percent of the plant species under review by USFWS for the State of Oregon. These plants are specific to serpentine substrate and are very narrow endemics known botanically as Illinois Valley endemics. The major population of *Hastingsia bracteosa*, one of the eleven candidate species, is located on Eight Dollar Mountain. The mountain is the type locality (a place from where plant species are first described) for several species. It is an area which has research being conducted on several of the rare species by botanists from throughout the United States. This research is in the areas of plant evolution, genetics, and systematic relationships.

BLM-administered lands on Eight Dollar Mountain are open to mineral entry subject to the provisions and limitations (where appropriate) of Pub. L. 359, Mining Claim Restoration Act; and Pub. L. 167, Surface Resources Act.

There are five mining claims within the proposed ACEC. Four of the claims, located on September 7, 1956, are in section 21 and total 640 acres. The remaining claim, located on May 7, 1956, is in section 28 and totals 80 acres.

Approximately 760 acres of the nominated area have been identified as containing nickel-bearing laterites, and the entire Eight Dollar Mountain has been nominated as an Area of Critical Mineral Potential (ACMP) by the Southern Oregon Resources Alliance. ACMPs are areas that were nominated by the public in 1982 as having mineral potential that is important to the local, regional, or national economy or that could become important in the future. They are used by BLM to re-evaluate areas under existing or "de facto" withdrawals from mineral location and leasing.

Strategic and critical minerals determined to have a moderate to high potential for occurrence in Eight Dollar Mountain include nickel, chrome, and cobalt which are used in large quantities and have a pervasive influence on the national economy and well-being.

#### **READING COPIES**

Public reading copies of the proposed designation will be available for review at the following locations:

- Klamath County Library, Klamath Falls, Oregon
- Josephine County Library, Grants Pass, Oregon
- Coos County Library, Coquille, Oregon
- Curry County Library, Gold Beach, Oregon
- Douglas County Library, Roseburg, Oregon
- Jackson County Library, Medford, Oregon
- Rogue Community College Library, Grants Pass, Oregon
- Library, Southern Oregon State College, Ashland, Oregon
- Library, Oregon Institute of Technology, Klamath Falls, Oregon
- Bureau of Land Management, Office of Public Affairs, 825 NE. Multnomah Street, Portland, Oregon
- Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon
- Library, University of Oregon, Eugene, Oregon
- Library, Portland State University, 727 SW. Harrison, Portland, Oregon



Library, Oregon State University,  
Corvallis, Oregon

A limited number of copies of the proposed decision are available upon request to the BLM Medford District Office.

## QUESTIONS

Questions on the specific ACEC management plan, research opportunities or development/protection should be addressed to:

Harold Belisle, Area Manager, Grants Pass Resource Area, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504

## PROTEST

Any person who participated in the planning process and has an interest which is, or may be, adversely affected by the above proposed amendment may protest such amendment in accordance with 43 CFR 1610.5-2. The protest shall be in writing and shall be filed with the Director. Barring a protest, this plan will be implemented on May 21, 1986.

Dated: April 4, 1986.

James P. Clason,

Acting District Manager.

[FR Doc. 86-8033 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-33-M

[A-21022]

## Exchange of Lands; Mohave County, AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent/Notice of Realty Action, Land Use Plan Amendment, Exchange, Public Land, Mohave County, Arizona.

**SUMMARY:** An amendment of the Cerbat Mountains Management Framework Plan is proposed to allow for the exchange of lands and interests, described below, under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

### Gila and Salt River Meridian

T. 20 N., R. 21 W.,

Sec. 18, lots 2 and 3, SE $\frac{1}{4}$ NW $\frac{1}{4}$ , and NE $\frac{1}{4}$ SW $\frac{1}{4}$ .

Containing 160.64 acres, more or less.

In exchange for these lands, the United States would acquire the following described land from Frank L. Hunt of Valentine, Arizona:

### Gila and Salt River Meridian

T. 23 N., R. 13 W.,

Sec. 23, E $\frac{1}{2}$ , E $\frac{1}{2}$ W $\frac{1}{2}$ , NW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ , E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , S $\frac{1}{2}$ NW $\frac{1}{4}$

NW $\frac{1}{4}$ SW $\frac{1}{4}$ , SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ , and SW $\frac{1}{4}$ SW $\frac{1}{4}$ ;

Sec. 25, N $\frac{1}{2}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ , and NW $\frac{1}{4}$ SE $\frac{1}{4}$ ;

Sec. 27, N $\frac{1}{2}$ , SW $\frac{1}{4}$ , NE $\frac{1}{4}$ SE $\frac{1}{4}$ , and S $\frac{1}{2}$ SE $\frac{1}{4}$ ;

Sec. 35, S $\frac{1}{2}$ .

Containing 1,990.00 acres, more or less.

The public land to be transferred would be subject to the following terms and conditions:

1. Reservations to the United States—(a). right-of-way for ditches and canals pursuant to the Act of August 30, 1890; and (b). all the oil and gas and with it the right to prospect for, mine, and remove same.

2. Subject to:—(a). any restrictions that may be imposed by Bullhead City in accordance with Chapter 15 of the Bullhead City Code entitled, "Flood Regulations," effective July 1, 1985; and (b). gas pipeline right-of-way A-4453.

The private land to be acquired by the United States would be subject to the following reservation:

1. All minerals to the Santa Fe Pacific Railroad as set forth in Book 65 of Deeds, page 536.

Publication of this Notice will segregate the subject lands from all appropriations under the public lands laws, including the mining laws, but not mineral leasing laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

The private land offered in the above exchange is located approximately two (2) miles south of Valentine, Arizona. The Cerbat Mountains Management Framework Plan designates the public land in this area for disposal. As a result of the proposal submitted by Frank L. Hunt, the Bureau of Land Management proposes to redesignate the area for retention.

Detailed information concerning the land use plan amendment and the exchange can be obtained from Roger G. Taylor, Area Manager, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, Telephone Number (602) 757-3161. For a period of forty-five (45) days from the date of publication of this Notice in the Federal Register, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 3, 1986.

Marlyn V. Jones,

District Manager.

[FR Doc. 86-8039 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-32-M

## Idaho; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by Sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manuals 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1.G, and Secretarial Orders 3071, and 2087, and Bureau of Land Management Instruction Memorandum 83-384, the following-described lands are hereby revoked as the Castle Creek Known Geothermal Resources Area, effective February 1, 1986:

### (12) Idaho—Castle Creek Known Geothermal Resources Area

#### Boise Meridian Idaho

T. 3 S., R. 1 E.

Secs. 23 through 26;  
Secs. 35 and 36.

T. 4 S., R. 1 E.

Secs. 1 through 3;  
Secs. 10 through 15;  
Secs. 19 through 36.

T. 5 S., R. 1 E.

Secs. 1 through 4;  
Secs. 9 through 16;  
Secs. 21 through 26.

T. 3 S., R. 2 E.

Sec. 31.

T. 4 S., R. 2 E.

Secs. 8 through 8;  
Secs. 17 through 21;  
Secs. 28 through 36.

T. 5 S., R. 2 E.

Secs. 1 through 30.

T. 5 S., R. 3 E.

Secs. 7 and 8;  
Secs. 13 through 36.

Containing 79,722 acres, more or less.

The subject lands will be made available to the first qualified applicant under regulations appearing at 43 CFR 3210 beginning with the first calendar month following the date of this notice.

Dated: April 1, 1986.

Bill R. Lavelle,

Deputy State Director for Mineral Resources.

[FR Doc. 86-7993 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-CG-M

## Proposed Management Framework Plan Amendment; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Westside Salem Management Framework Plan and Walker Creek Water Supply Project; notice of intent to prepare an environmental impact statement, preliminary issues and public involvement opportunities.



**SUMMARY:** The Oregon State Director, Bureau of Land Management, U.S. Department of the Interior, has decided to prepare a proposed plan amendment and environmental impact statement (EIS) for the Walker Creek Water Supply Project proposed by the Water and Light Department of the City of McMinnville, Oregon. If authorized, the project would require amending land use allocations made in the Westside Salem Management Framework Plan. The proposal will be analyzed pursuant to 43 CFR 1610 for resource management planning. Decisionmaking will take place over a period of several months following completion of the final statement. A newsletter with a map, project proposal description and proposed list of issues and planning criteria is available. A public scoping meeting has been scheduled to answer questions and receive input.

The U.S. Army Corps of Engineers, which has permitting authority under section 404 of the Clean Water Act, has agreed to be a cooperating agency in preparation of the EIS.

**SUPPLEMENTARY INFORMATION:** The plan amendment could revise land use allocations and management directions for the BLM portion of the site and nearby areas.

The EIS will analyze the environmental effects of a 100-foot high earth and rock dam and approximately 248-acre water storage reservoir on Walker Creek, a tributary of the Nestucca River. The project area is located near the northwest corner of Yamhill County, Oregon.

General types of issues anticipated include municipal water supply, candidate threatened plant species, wetlands, riparian habitat, fisheries, minimum stream flow and recreation. Disciplines to be represented on the interdisciplinary team will include lands and reality, wildlife biology, botany, recreation, hydrology and economics.

Alternatives to the proposal which will be discussed in the EIS include:

1. Other possible dam and reservoir locations.
2. Other means of assuring an adequate future municipal water supply.
3. No Action.

The EIS will identify the impacts that can be expected from implementation of any alternative, including the proposed action. The EIS will be an analytical tool used to assist in making final decisions regarding the supply project application and potential land use allocation amendments.

**DATE:** A public scoping meeting to identify significant issues and to obtain public comments on the formulation of specific alternatives will be held.

Significant environmental issues are those considered to be of particular importance for in-depth analysis in the EIS. The principal meeting will take place at the McMinnville Community Center, McMinnville, Oregon, on Tuesday, April 29, 1986, at 7:00 p.m. The public is invited to submit written comments by May 12, 1986, on site specific issues, formulation of alternatives and other planning criteria. Anyone wishing to comment or be added to the mailing list should contact the Salem District Manager, 1717 Fabry Road, PO Box 3227, Salem, OR 97302.

Public involvement will be a key part of the planning process. Public announcements and notices in local newspapers, along with published BLM planning documents will provide schedules and locations for meetings associated with the planning process and document review and comment opportunities.

Further information may be obtained from: Bob Saunders, Planning and Environmental Coordinator, Bureau of Land Management, 1717 Fabry Road, PO Box 3227, Salem, OR 97302, Telephone (503) 399-5634.

Dated: March 31, 1986.  
Edward S. Lewis III,  
Acting District Manager, Salem.  
[FR Doc. 86-7977 Filed 4-9-86; 8:45 am]  
BILLING CODE 4310-33-M

### Colorado; Craig District Advisory Council Meeting

In accordance with Pub. L. 94-579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on May 21, 1986.

The meeting will begin at 9 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

- Agenda items will include:
1. Election of Chairperson and Vice-Chairperson
  2. Slide program on river recreation in Juniper and Cross Mountain canyons
  3. Tour of off-road vehicle damage in Sand Wash.

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 9:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council, or file a written statement, should notify the District Manager, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by May 15, 1986. The field trip to Sand Wash will be open to the public; however, individuals must furnish their own transportation.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for public inspection and reproduction during regular business hours.

Dated: April 2, 1986.  
William J. Pulford,  
District Manager.  
[FR Doc. 86-7988 Filed 4-9-86; 8:45 am]  
BILLING CODE 4310-JB-M

### Meeting To Discuss Proposed Gathering of the Jackies Butte Wild Horse Herd as Part of the University of Minnesota's Wild Horse Fertility Study

**SUMMARY:** Notice is given that the Vale District will conduct a public meeting May 13, 1986, to discuss (1) a proposed gathering of the Jackies Butte Wild Horse Herd and (2) proposed movement of a small number of wild horses from Oregon back to Idaho. The Jackies Butte Wild Horse Herd Management Area (HMA) is one of four HMAs in western Nevada and southeastern Oregon that are involved in a fertility control study being conducted by the University of Minnesota, under a grant from the National Academy of Sciences. The study is examining two fertility control measures: vasectomy of the dominant stud in a band, and implanting a birth control device in suitable mares. The Jackies Butte HMA is to serve as the control for the birth control implantation portion of the study.

The gathering would take place in mid-June, 1986. The entire herd would be gathered (an estimated 140 horses). Two blood samples would be taken from each horse, a marker collar would be attached, and a birth control implant placebo would be placed within suitable mares. Researchers would then study the horses periodically during 1986, 1987 and 1988.

Also to be discussed at this meeting will be the proposed movement of a small number of wild horses from a non-HMA in Oregon back to a HMA within Idaho. The horses were originally from the Idaho HMA and moved into Oregon through an open gate.

**ADDRESS:** The meeting will be held May 13th, at 1:00 p.m., in the conference room of the Vale BLM District Office, located at 100 East Oregon Street in Vale, Oregon. Public attendance and comments are welcomed.

David Lodzinski,  
Associate District Manager.  
[FR Doc. 86-7971 Filed 4-9-86; 8:45 am]  
BILLING CODE 4310-33-M



[W-65670]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-65670 for lands in Sweetwater County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 16% percent, respectively.

The lessee has paid the required \$500.00 administrative fee and \$106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-65670 effective February 1, 1986, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,  
Chief, Leasing Section.

[FR Doc. 86-8034 Filed 4-9-86; 8:45 am]  
BILLING CODE 4310-22-M

[W-95530]

### Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-95530 for lands in Campbell County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$7.00 per acre, or fraction thereof, per year and 16% percent, respectively.

The lessee has paid the required \$500.00 administrative fee and \$106.25 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (a) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land

Management is proposing to reinstate lease W-95530 effective July 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,  
Chief, Leasing Section.

[FR Doc. 86-8037 Filed 4-9-86; 8:45 am]  
BILLING CODE 4310-22-M

### Organization and Functions; Milwaukee District Office; Change in Office Hours and Public Room Hours

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management hereby announces changes in office hours and public room hours for the Milwaukee District Office, from 7:30 a.m. to 4:15 p.m., Monday through Friday, to 7:30 a.m. to 4:00 p.m., Monday through Friday. Inquiries should be directed to Bert Rodgers, Milwaukee District Manager. Telephone: (414) 291-440.

**FOR FURTHER INFORMATION CONTACT:** Lupe Renteria, Administrative Officer, U.S. Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201, Telephone (414) 291-4406, FTS 362-4406. Bert Rodgers, Milwaukee District Manager. March 26, 1986.  
[FR Doc. 86-7514 Filed 4-9-86; 8:45 am]  
BILLING CODE 4310-PN-M

### Sale of Public Lands; Idaho Falls District

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Realty Action, I-22434, Non-competitive Sale of Public Land in Bonneville County, Idaho.

**SUMMARY:** The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of the described tract in consistent with section 203(a) of the Federal Land Policy and Management Act of 1976. The land will be offered for sale for no less than the appraised fair market value.

T. 1 N., R. 44 E., Boise Meridian  
Section 1: Lots 63, 64, 65, 74, 75, 76, 94 and 95

The above aggregates 10 acres.

The land described will be offered for direct sale to the Palisades Ward LDS Church, HC 28, Box 10, Irwin, Idaho 83428. This sale is based on historic use

and the need to protect equities arising from past authorized use. Failure or refusal of the Palisades Ward LDS Church to submit the required amount by June 17, 1986, will result in cancellation of the sale. The lands will then be offered for competitive sale every Tuesday beginning June 24, 1986 through July 15, 1986. The appraisal will be available May 15, 1986. Palisades Ward LDS Church will be required to submit 30 percent of this amount by June 17, 1986 and the balance within 180 days of that date.

The land will be subject to the following reservations when patented:

1. Ditches and canals.
2. All minerals.
3. All existing rights and reservations of record.
4. Development of this parcel must be to the requirements of the Idaho State Department of Health, Bonneville County and the City of Swan Valley. In addition, building foundations must be built above the base level of the floodplain (State Highway 26). All structures shall be elevated using open walks/works, e.g. columns, walls, piles, piers, etc. rather than fill. The United States will assume no liability for construction on this parcel.

**DATES:** The land will not be offered for sale until at least 60 days following the date of this notice.

The parcel will be sold as described by the Government Land Office Surveys of 1958.

The previously described lands are hereby segregated from appropriation under the public land laws, including the mining laws, for a period of 270 days or until patent is issued, whichever comes first.

**ADDRESS:** The sale offering will be held at the Idaho falls District Office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

**FOR FURTHER INFORMATION CONTACT:** Scott Powers or Bruce Bash, Realty Specialists at the above address or by calling (208) 529-1020.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this reality action and issue a final determination. In the absence of any action by the District Manager, this reality action will become the final



determination of the Department of the Interior.

April 3, 1986.

O'dell A. Frandsen,  
District Manager.

[FR Doc. 86-7980 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-GG-M

#### Filing of Plats of Survey; Colorado

April 2, 1986.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 A.M., May 15, 1986.

The plat representing the dependent resurvey of the First Standard Parallel South, through Range 79 West, the independent resurvey of the south and east boundaries, and the survey of private land tracts 37 and 39, T. 6 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 797, was accepted March 25, 1986.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020 Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-8038 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-84-M

#### Land Resource Management; Filing of Plats of Survey; Montana

AGENCY: Montana State Office, Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted March 12, 1986, were officially filed in the Montana State Office effective 10 a.m. on March 26, 1986.

Principal Meridian, Montana

T. 9 S., R. 58 E.

The supplemental plat showing the subdivision of original Lots 11 through 16, section 1; and the subdivision of original Lot 11, section 24, Township 9 South, Range 58 East, Principal Meridian, Montana, is based upon the plat approved December 9, 1918; and was accepted March 12, 1986. The area described is in Carter County.

Principal Meridian, Montana

T. 9 S., R. 59 E.

The supplemental plat showing amended lottings and subdivision of original Lot 7, Section 6, Township 9 South, Range 59 East, Principal Meridian, Montana, is based upon plats approved June 21, 1888, and May 31, 1946; and was accepted March 12, 1986. The area described is in Carter County.

These plats were prepared at the request of the Deputy State Director, Division of Mineral Resources, to accommodate a mineral patent application.

EFFECTIVE DATE: March 26, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: March 31, 1986.

Marvin LeNoue,

Acting State Director.

[FR Doc. 86-7990 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-DN-M

#### Land Resource Management; Filing of Plats of Survey, Montana

AGENCY: Bureau of Land Management, Montana State Office.

ACTION: Notice of filing of plats of survey.

SUMMARY: Plats of survey of the lands described below accepted March 4, 1986, and March 7, 1986, were officially filed in the Montana State Office effective 10 a.m. on March 24, 1986.

Principal Meridian, Montana

T. 2 N., R. 21 E.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 24, Township 2 North, Range 21 East, Principal Meridian, Montana was accepted March 4, 1986. The area described is in Stillwater County.

Principal Meridian, Montana

T. 2 N., R. 22 E.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 30, Township 2 North, Range 22 East, Principal Meridian, Montana, was accepted March 4, 1986. The area described is in Stillwater County.

These surveys were executed at the request of the Miles City District Office for the administrative needs of the Bureau.

Principal Meridian, Montana

T. 11 N., R. 10 W.

The plat representing the dependent resurvey of a portion of the Deer Lodge

Guide Meridian through Township 11 North, a portion of the south boundary, a portion of the subdivisional lines, and Mineral Survey No. 8886, Silver Reef Lode; and the survey of the subdivision of section 28, Township 11 North, Range 10 West, Principal Meridian, Montana, was accepted March 4, 1986. The area described is in Powell County.

Principal Meridian, Montana

T. 13 N., R. 12 W.

The plat representing the dependent resurvey of line 32-33, Mineral Survey No. 4799, Deer Gulch Placer, and the survey of Lot No. 16, section 18, Township 13 North, Range 12 West, Principal Meridian, Montana, was accepted March 7, 1986. The area described is in Powell County.

These surveys were executed at the request of the Butte District Office for the administrative needs of the Bureau.

EFFECTIVE DATE: March 24, 1986.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107.

Dated: March 31, 1986.

Marvin LeNoue,

Acting State Director.

[FR Doc. 86-7991 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-DN-M

#### Fish and Wildlife Service

Endangered and Threatened Species Permit Application; Riverside County et al.; Extension of Comments

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.):

Applicant: Riverside County et al.,

Riverside, CA, PRT 698685

The comment period previously announced in the Federal Register of November 18, 1985 (50FR4762), on the application for a permit for incidental taking of Coachella Valley Fringe-toed Lizards (*Uma inornata*) by Riverside County et al., Riverside CA is hereby extended until midnight April 11, 1986, in order to allow further comments by interested parties.

Documents and other information submitted with this application are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service at the above address.



Interested persons may comment on this application until midnight April 11, 1986, by submitting written views, arguments, or data to the Director at the above address. Please refer to PRT 698685 (Coachella) when submitting comments.

Dated: April 7, 1986.

Larry LaRochelle,  
Acting Chief, Branch of Permits, Federal  
Wildlife Permit Office.

[FR Doc. 86-7996 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M

#### Minerals Management Service

##### Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202-395-7313, with copies to David A. Schuenke; Chief, Rules, Orders, and Standards Branch; Offshore Rules and Operations Division; Mail Stop 646, Room 6A110; Minerals Management Service; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

Title: Alaska Outer Continental Shelf (OCS) Social Indicators Survey

Abstract: Respondents supply information and data to establish measures of well being of rural populations potentially affected by OCS activity. This information will allow the Agency to establish a basis to describe, project, and monitor the effects of major Federal action on the Alaskan OCS

Bureau Form Number: None

Frequency: On occasion

Description of Respondents: Residents in rural Alaska potentially affected by OCS leasing

Annual Responses: 1,500

Annual Burden Hours: 750

Bureau clearance officer: Dorothy Christopher, 703-435-6213.

Dated: November 19, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 86-7989 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-MR-M

##### Outer Continental Shelf Offshore the Central and Western Gulf of Mexico; Availability of Environmental Assessment and Finding of No Significant Impact Regarding Proposed Oil and Gas Lease Sales 104 (Central Gulf) and 105 (Western Gulf)

On November 1, 1985, the U.S. Department of the Interior, Minerals Management Service, filed the Final Environmental Impact Statement, Proposed Oil and Gas Lease Sales 104 and 105, Gulf of Mexico Region, FES 85-0485. That document analyzed the potential impacts of adopting the proposed sale configurations and alternatives. Subsequent to the filing of that document, the presence of biological communities in the form of chemosynthetic bacteria, and associated clams and tube worms, in deep waters of the Central Gulf of Mexico came to the attention of the Department.

According to the regulations, 40 CFR 1502.9(c)(1), for implementing the National Environmental Policy Act, an environmental assessment has been prepared analyzing the impacts on the chemosynthetic communities of adopting the same proposed sale configurations and alternatives as were analyzed in FES 85-0485. The conclusions drawn in the environmental assessment titled, "Assessment of Environmental Impacts to Chemosynthetic Communities from Proposed OCS Oil and Gas Lease Sales 104 and 105", are that there is no evidence to indicate that the proposed actions or alternatives to those actions will significantly affect the quality of the human environment and that the existence of the chemosynthetic communities does not constitute a significant new circumstance relevant to environment concerns and bearing on the proposed action or its impacts. These conclusions were placed in a Finding of No Significant Impact (FONSI) which also stated that the preparation of a supplement to the Final Environmental Impact Statement is not required.

Copies of the environmental assessment and FONSI can be obtained from the Regional Supervisor, Leasing and Environment, Gulf of Mexico OCS Region, Minerals Management Service, Post Office Box 7944, Metairie,

Louisiana 70010, Telephone (504) 838-2755.

Dated: April 1, 1986.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 86-7965 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-MR-M

##### Outer Continental Shelf; Development Operations Coordination Document; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4518, Block 184, Green Canyon Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on April 1, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Mineral Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the



public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additional, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service make information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, [44 FR 53685].

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 2, 1986.

J. Rogers Peancy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 86-8040 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-MR-M

#### Development Operations Coordination Document; FMP Operating Co.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that FMP Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4479, Block 45, South Pass Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 1, 1986. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the DOCD from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 8 a.m. to 3:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also

available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit, Phone (504) 838-0875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, [44 FR 53685].

Those practices and procedures are set out in revised Section 250.34 of Title 30 of the CFR.

Dated: April 2, 1986.

J. Rogers Peancy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 86-7966 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-MR-N

#### Development Operations Coordination Document; Huffco Petroleum Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the receipt of a proposed development operations coordination document (DOCD).

**SUMMARY:** Notice is hereby given that Huffco Petroleum Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2321, Block 348, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and

production of hydrocarbons with support activities to be conducted from an onshore base located at Kapland, Louisiana.

**DATE:** The subject DOCD was deemed submitted on April 2, 1986.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

**FOR FURTHER INFORMATION CONTACT:** Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Rules and Production, Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executive of affected States, local governments, and other interested parties became effective December 13, 1979, [44 FR 53685]. Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 3, 1986.

J. Rogers Peancy,

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 86-7974 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-MR-N

#### DEPARTMENT OF JUSTICE

##### Information Collection Activities Under OMB Review

April 7, 1985.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information: the name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the



agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether section 3504(h) of Pub. L. 96-511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry AND to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

#### Department of Justice

Agency Clearance Officer: Larry E. Miesse, 202/633-4312.

#### *Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection*

(1) Larry E. Miesse, 202/633-4312  
(2) Foreign Claims Settlement Commission, Department of Justice  
(3) Request for Confirmation of Naturalization  
(4) FCSC-13  
(5) On occasion  
(6) Individuals or households. Used to provide information on the U.S. naturalization of claimants before the Commission as required by law (Pub. L. 81-455 and the Ethiopian Claims Agreement of 1985) in determining eligibility for awards for losses

(7) 20 respondents  
(8) 5 burden hours  
(9) Not applicable under 3504(h)  
(10) Robert Veeder—395-4814  
(1) Larry E. Miesse, 202/633-4312  
(2) Drug Enforcement Administration, Department of Justice  
(3) Application for Procurement Quota for Controlled Substances  
(4) DEA-250  
(5) On occasion  
(6) Businesses or other for-profit.

Required use by registered dosage from manufacturers who wish to purchase controlled substances in Schedule II; information is used in establishing quotas and controlling procurement.  
(7) 344 respondents  
(8) 344 burden hours  
(9) Not applicable under 3504(h)

(10) Robert Veeder—395-4814

#### *New Collection(s)*

(1) Larry E. Miesse, 202/633-4312  
(2) Immigration and Naturalization Service, Department of Justice  
(3) Resident Illegal Alien Population Study  
(4) No form number  
(5) On occasion (one-time)  
(6) Individuals or households. To respond to continuing Congressional requests for information on illegal aliens and their impact on U.S. society, INS will conduct a survey of apprehended illegal aliens. Results will be provided to the Congress on this segment of the resident illegal alien population

(7) 1,500 respondents  
(8) 500 burden hours  
(9) Not applicable under 3504(h)  
(10) Robert Veeder—395-4814  
(1) Larry E. Miesse, 202/633-4312  
(2) Foreign Claims Settlement Commission, Department of Justice  
(3) Ethiopian Claims Program  
(4) No form number  
(5) On occasion  
(6) Individuals or households; businesses or other for-profit; non-profit institutions; small businesses or organizations. The Commission is required by statute to request evidence and information from claimants in order to have a sufficient record on which to base determinations granting awards or denying claims for losses in Ethiopia  
(7) 50 respondents  
(8) 5 burden hours  
(9) Not applicable under 3504(h)  
(10) Robert Veeder—395-4814.

Larry E. Miesse,

Department of Justice Clearance Officer.

[FR Doc. 8025 Filed 4-9-86; 8:45 am]

BILLING CODE 4410-10-M

#### **Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act; George P. Bissell Co. et al.**

In accordance with Department Policy, 28 CFR 50.7, 30 FR 19029, notice is hereby given that a proposed Consent Decree in *United States of America v. George P. Bissell Company et al*, Civil Action No. Y-83-3745 was lodged with the United States District Court for the District of Maryland on March 28, 1986.

The complaint and amended complaints filed by the United States alleged that defendants George P. Bissell Company; Pemil, Inc.; Montgomery Brothers, Inc.; Paul J. Mraz and Sally K. Mraz, as trustees of the property and assets of Galaxy Chemicals, Inc.; Paul J. Mraz; James Waters, Sr.; James Waters,

Jr.; as director and trustee of Trinco, Inc.; E.I. duPont de Nemours and Company, Inc.; Marisol, Inc.; E.R. Squibb & Sons, Inc.; Wyeth Laboratories, Inc.; W.L. Gore & Associates, Inc.; Bristol-Myers Company; Union Carbide Corporation; Board of County Commissioners of Cecil County, Maryland; David Moore; and Firestone Synthetic Rubber and Latex Company, a division of Firestone Tire and Rubber Company violated the Comprehensive Environmental Response, Compensation and Liability Act by generating, transporting or disposing of hazardous waste at a site in North East, Maryland. The complaints sought reimbursement for response costs incurred by EPA Hazardous Waste Response Trust Fund and the State of Maryland for cleanup of the waste site in North East, Maryland. The Consent Decree requires the defendants to pay a settlement sum of \$930,000.

The Department of Justice will receive for a period of thirty (30) days from date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States v. George P. Bissell Co.*, DOJ Ref. No. 90-11-2-15.

The proposed Consent Decree may be examined at the Office of the Attorney General, 7 North Calvert Street, Baltimore, Maryland 21202. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of this proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$1.80 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-8031 Filed 4-9-86; 8:45 am]

BILLING CODE 4410-01-M

#### **NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES**

##### **Humanities Panel Meeting**

**AGENCY:** National Endowment for the Humanities.



**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC. 20506

Date: April 21, 1986.

Time: 9:00 a.m. to 5:00 p.m.

Room: 315.

Program: This meeting will review applications submitted to the Regrants Program of the Division of Research Programs, in two categories; Regrants for International Research, for support of American Scholars pursuing research abroad and for collaborative work with foreign colleagues; and Regrants in Selected Areas, for support of three programs administered by the American Council of Learned Societies (grants-in-aid; research fellowships; and research fellowships for recent recipients of the Ph.D. degree). The competition is for projects beginning after September 1, 1986.

The proposed meeting is for the purpose of panel review, discussion, evaluation and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of a personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that this meeting will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552 of Title 5, United States Code.

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506, or call (202) 786-0322.

Stephen J. McCleary,  
Advisory Committee Management Officer.

[FR Doc. 86-7997 Filed 4-9-86; 8:45 am]

BILLING CODE 7536-01-M

**National Council on the Humanities; Meeting**

April 4, 1986.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on May 8-9, 1986.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on May 8, 1986 will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the sessions on May 8, 1986 will be as follows:

**Committee Meetings**

(Open to the Public)

8:30 a.m.-9:30 a.m.

Coffee for Council Members—Room 502

9:30 a.m.-10:30 a.m.

Committee Meeting—Policy Discussion

Education Programs—Room M-14

Fellowship Programs—Room 315

General Programs—Room 415

Research Programs—Room 316-2

State Programs—Room M-07 East

10:30 a.m. until Adjournment

(Closed to the Public for the reasons stated above)—Consideration of specific applications

(Open to the Public)

Policy Discussion

3:00 p.m.-3:30 p.m.

Preservation Grants—Room M-07 West

3:30 p.m. until Adjournment

(Closed to the Public for the reasons stated above)—Consideration of specific applications

The morning session on May 9, 1986 will convene at 8:30 a.m. in the 1st Floor Council Room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members attending meeting will be served from 8:30 a.m.-9:00 a.m.)

**Minutes of the Previous Meeting Reports**

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded in the Previous Quarter

D. Dates of Future Council Meetings

E. Application Report and Matching Report

F. Status of FY 1986 Funds

G. Fiscal Year 1987 Appropriation Request

H. Fiscal Year 1988 Budget Planning

I. Committee Reports on Policy and General Matters

1. Education Programs

2. Fellowship Programs

3. Preservations Grants

4. Research Programs

5. General Programs

6. State Programs

J. Emergency Grants and Actions Departing from Council Recommendation—Approvals.

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code 202-786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 86-7998 Filed 4-9-86; 8:45 am]

BILLING CODE 7536-01-M

**NATIONAL SCIENCE FOUNDATION****Advisory Committee for Computer Research; Meeting**

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer Research.

Date and Time: May 1, 1986 9:00 a.m. to 5:00 p.m.; May 2, 1986 9:00 a.m. to 3:00 p.m.

Place: Room 1242-A, National Science Foundation 1800 G Street, NW, Washington, DC 20550



Type of Meeting: All open—May 1 open—9:00 a.m. to 5:00 p.m.; May 2 open—9:00 a.m. to 3:00 p.m.

Contact Person: Kent K. Curtis, Division Director, Division of Computer Research, Room 304, National Science Foundation, 1800 G Street NW Washington, DC 20550. Telephone: (202) 357-9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than April 28, 1986.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

Summary Minutes: May be obtained from the contact person at the above address. April 7, 1986.

M. Rebecca Winkler,  
Committee Management Officer.

#### Advisory Committee for Computer Research—Agenda

Thursday, May 1, 1986, Room 124-A—9:00 a.m. to 5:00 p.m.—Open

- 9:00 a.m.—Announcements and Review of Agenda, K. Curtis
- 9:15 a.m.—Directorate for Computer and Information Science and Engineering, G. Bell
- 10:15 a.m.—Break
- 10:30 a.m.—Status Report on Division of Computer Research, K. Curtis
- 11:00 a.m.—February 28 Workshop, Ken Kennedy
- 11:30 a.m.—Report by Kosaraju Subcommittee, Rao Kosaraju
- 12:00 Noon—Working Lunch
- 1:00 p.m.—CER Oversight Review and Discussion, Nico Habermann, Burton Smith
- 4:00 p.m.—Report of Hopcroft Subcommittee, John Hopcraft
- 5:00 p.m.—Adjourn

Friday, May 2, Room 1242-A—9:00 a.m. to 3:00—Open

- 9:00 a.m.—FCCSET Committee Report, R. Adrien
- 10:00 a.m.—Initiatives and Long Range Planning, K. Curtis
- 12:00 Noon—Working Lunch: DARPA Programs, Saul Amarel
- 1:00 P.M.—Foreign Nationals in Computer Science, Wendy Lehnert
- 2:00 p.m.—Committee Business, Ken Kennedy
- 3:00 p.m.—Adjourn.

[FR Doc. 86-8079 Filed 4-9-86; 8:45 am]

BILLING CODE 7555-01-M

#### Advisory Panel for Ethics and Values Studies; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Ethics and Values Studies.

Date and Time: May 1 and 2, 1986; 8:30 a.m. to 5 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street NW., Washington, DC.

Type of Meeting: Part Open; open, May 2: 11 a.m.-4 p.m.; closed remainder of scheduled time.

Contact Person: Dr. Rachelle Hollander, Coordinator, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, telephone 202/357-9894.

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Meeting: To provide advice and recommendation concerning support for research and related activities in this field.

Agenda: Open—General discussion of the current status and future plans for Ethics and Values Studies. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemption (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,  
Committee Management Officer.

April 7, 1986.

[FR Doc. 86-8080 Filed 4-9-86; 8:45 am]

BILLING CODE 7555-01-M

#### Advisory Panel for Molecular and Cellular Neurobiology Program; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Panel for Molecular and Cellular Neurobiology Program.

Date and Time: April 30, May 1, and 2, 1986; 9:00 a.m.-5:00 p.m. each day.

Place: National Science Foundation, 1800 G Street NW., Room 1242B, Washington, DC 20550.

Type of Meeting: Opened May 1, 1986—1:00 p.m. to 3:00 p.m.; Closed—remainder of scheduled time.

Contact Person: Stephen J. Morris, Director for Molecular and Cellular Neurobiology Program, National Science Foundation, Room 320, Washington, DC 20550. Telephone (202) 357-7471.

Summary Minutes: May be obtained from the Contact Person at the above stated address.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Neurobiology.

Agenda: Open—General discussion of the current status and future plans of the Molecular and Cellular Neurobiology Program; Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of the proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. of 522b(c), Government in the Sunshine Act.

Authority to Close Meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,  
Committee Management Officer.

April 7, 1986.

[FR Doc. 86-8081 Filed 4-9-86; 8:45 am]

BILLING CODE 7555-01-M

#### Advisory Committee for Chemistry, Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.  
Date and Time: April 25, 1986; 8:30 am to 5:00 pm.

Place: Room 540, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Edward F. Hayes, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550. Telephone (202) 357-7947.

Summary Minutes: May be obtained from Dr. Edward F. Hayes.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open-Discussion of the current status and future plans of the Chemistry Division's activities.

M. Rebecca Winkler,  
Committee Management Officer.

April 27, 1986.

[FR Doc. 86-8082 Filed 4-9-86; 8:45 am]

BILLING CODE 7555-01-M



## NUCLEAR REGULATORY COMMISSION

### Regional State Liaison Officers' Meeting

On April 22 and 23, 1986, the Nuclear Regulatory Commission (NRC) will sponsor a Regional meeting with the Governor-appointed State Liaison Officers from Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia and the Commonwealth of Puerto Rico. The subjects which will be discussed include waste management, emergency planning, transportation, Regional activities as well as other areas of mutual interest.

The meeting will be conducted at the NRC Region II Office, 101 Marietta Street, Suite 2900, Atlanta, Georgia. The meeting is open to the public for attendance and observation and will take place from 8:30 a.m. to 5:30 p.m. on Tuesday, April 22, 1986, and from 8:30 a.m. to 12:00 noon on Wednesday, April 23, 1986.

Questions regarding this meeting should be directed to Mindy Landau at (301) 492-9880.

Dated at Atlanta, Georgia this 31st day of March 1986.

For the Nuclear Regulatory Commission.

J. Nelson Grace,

*Regional Administrator, Region II.*

[FR Doc. 86-8054 Filed 4-9-86; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Office of Federal Procurement Policy has submitted the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35). The proposal contains the following information: (1) Type of submission; (2) title of information collection and form number, if applicable; (3) abstract statement of the need for and the uses to be made of the information collected; (4) type of respondent; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) the point of contact from whom a copy

of the new information proposal may be obtained.

**New Collection—Relocation Cost Study:** This survey will be used by the Office of Federal Procurement Policy to ascertain the magnitude of relocation costs now associated with Government contracts pursuant to its study of contractor relocation costs mandated by Pub. L. 99-234. Responses will be sought from the 50 largest Government contractors, requiring an estimated total of 200 hours to provide the requested information.

**ADDRESS:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Mr. Charles W. Clark, Room 9013, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503, telephone number (202) 395-6803.

William J. Maraist, Jr.,

*Acting Administrator.*

[FR Doc. 86-7972 Filed 4-9-86; 8:45 am]

BILLING CODE 3110-01-M

## POSTAL SERVICE

### Implementation of Temporary Change in the Domestic Mail Classification Schedule Provision Regarding Bulk Third-Class Five-Digit Presort Mail

**AGENCY:** Postal Service.

**ACTION:** Notice of implementation of a temporary change in the domestic mail classification schedule provision regarding bulk third-class five-digit presort mail.

**SUMMARY:** This gives notice that effective 12:01 a.m. April 20, 1986, the Postal Service will implement a temporary change in the Domestic Mail Classification Schedule that will eliminate the requirement that bulk third-class five-digit presort mail be prepared "so as to avoid handling of individual pieces or packages until they reach the five-digit ZIP code delivery unit."

**EFFECTIVE DATE:** April 20, 1986.

**FOR FURTHER INFORMATION CONTACT:** William T. Alvis, (202) 268-2982.

**SUPPLEMENTARY INFORMATION:** On December 26, 1985, the United States Postal Service requested the Postal Rate Commission to submit to the Governors of the Postal Service a recommended decision on amending section 300.0231 of the Domestic Mail Classification Schedule to delete the words "so as to

avoid handling individual pieces or packages until they reach the five-digit ZIP code delivery unit." As so amended the section would read as follows:

Five-digit presort level mailings must contain at least 200 pieces or 50 pounds of five-digit presorted mail prepared in accordance with USPS regulations.

Notice of the Postal Service's request was published in the *Federal Register* by the Rate Commission on January 8, 1986 (51 FR 795).

Under the Postal Reorganization Act, if the Postal Rate Commission has not transmitted its recommended decision to the Governors of the Postal Service within 90 days of the submission to it of the Postal Service's request for a recommended decision on a proposed change in the mail classification schedule, the Postal Service may place the proposed change into effect on a temporary basis. 39 U.S.C. 3641(e). More than ninety days have elapsed since the Postal Service filed its request for a recommended decision on the proposed bulk third-class five-digit presort mail change and the Rate Commission has not transmitted its recommended decision to the Governors. By Resolution No. 86-7 the Board of Governors on April 7, 1986, voted to implement the proposed change on a temporary basis and set April 20, 1986, as the date on which the temporary change will become effective. Accordingly, the proposed change in the classification schedule described above shall take effect on a temporary basis at 12:01 a.m. on April 20, 1986.

W. Allen Sanders,

*Associate General Counsel, Office of General Law and Administration.*

[FR Doc. 86-8013 Filed 4-9-86; 8:45 am]

BILLING CODE 7710-12-M

## PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

### Hospital Productivity and Cost-Effectiveness Subcommittee, Meeting

Notice is hereby given of a meeting of the Subcommittee on Hospital Productivity and Cost-Effectiveness of the Prospective Payment Assessment Commission on Monday, May 12, 1986. The meeting will convene at two o'clock, p.m. in the Idaho room of the Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008. The meeting will be open to the public. The subcommittee also welcomes written comments concerning the prospective payment system and PROPAC's future activities. Comments may be sent to Mrs. Dena Puskin, 300



7th Street SW., Suite 301B, Washington, DC 20024.

Donald A. Young,

*Executive Director.*

[FR Doc. 86-7922 Filed 4-9-86; 8:45 am]

BILLING CODE 6820-BW-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15040; File No. 811-3812]

### CNA Growth Stock Fund, Inc.; Application for Order Declaring That Applicant Has Ceased To Be an Investment Company

April 4, 1986.

Notice is hereby given that CNA Growth Stock Fund, Inc. ("Applicant"), CNA Plaza, Chicago, Illinois 60685, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on March 4, 1986, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it is a Maryland corporation and that it filed a registration statement pursuant to section 8(b) of the Act on June 27, 1983. The registration never became effective and no public offerings were commenced. The applicant further states that there is just one securityholder which will redeem its shares in exchange for cash. Applicant also states that it has not transferred any of its assets to a separate trust; it has no debts; it is not a party to any litigation or administrative proceeding; and it does not intend to engage in any business activities other than those necessary for the winding-up of its affairs.

Notice is further given that any interested party wishing to request a hearing on the application may, not later than April 29, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon the Applicant at the address stated above. Proof of service (by affidavit or,

in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

*Secretary.*

[FR Doc. 86-8050 Filed 4-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15041; 812-6294]

### Delaware Fund, Inc., et al.; Application To Permit Joint Trading Account

April 4, 1986.

Notice is hereby given that Delaware Fund, Inc., Decatur Income Fund, Inc., Delta Trend Fund, Inc., Delchester Bond Fund, Inc., DMC Tax-Free Income Trust-PA, DMC Tax-Free Income-USA, Inc., Delaware Group Government Fund, Inc., Universal Growth Fund, Inc., Delaware Cash Reserve, Inc., Delaware Tax-Free Money Fund, Inc., and Delaware Treasury Reserves (collectively, the "Funds"), and Delaware Management Company, Inc. ("DMC," collectively with the Funds, "Applicants"), Ten Penn Center Plaza, Philadelphia, PA 19103, filed an application on January 31, 1986, and an amendment thereto on April 3, 1986, for an order pursuant to section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, permitting the Funds as well as future investment companies for which DMC or subsidiaries or affiliates thereof serves as investment adviser, to deposit uninvested cash balances into a single joint account whose daily balance would be used to enter into one or more large repurchase agreements. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

According to the application, the Funds comprise the Delaware Group of Investment Companies and are advised by DMC. Applicants request permission to deposit the Funds' uninvested cash balances at the end of each trading day into a single joint account, the daily balance of which would be used to invest in one or more large repurchase agreements in a total amount equal to the aggregate daily balance in the account. Applicants state that certain of the Funds' cash balances are presently

separately invested daily in individual purchases of U.S. Government securities or repurchase agreements with a bank or major brokerage house in order to earn additional income for each Fund.

According to the application, each morning the repurchase desk operated by DMC on behalf of the Funds begins negotiating the interest rate for repurchase agreements for that day and lining up the United States government obligations required as collateral. Applicants state that most of the morning purchases of repurchase agreements are completed by 9:30 a.m. and that the trading desk is able to place final East Coast orders between 1:30 p.m. and 2:30 p.m., with an occasional agreement as late as 3:00 p.m. in unusual circumstances. Applicants further state that a Fund may enter into West Coast repurchase agreements (which are available to 4:00 p.m. New York time) on an "as needed" basis, although there can remain in each Fund's account, some amount of assets which is received too late, or is too small to be effectively invested in a separate transaction.

In connection with the use of repurchase transactions collateralized by U.S. Government securities, Applicants represent that each of the Funds has established the same systems and standards including quality standards for issuers of repurchase agreements and for collateral, and requirements that the repurchase agreements will be at least 100% collateralized at all times. Applicants further represent that the same systems and standards will apply to the proposed joint trading account. According to the application, each proposed repurchase agreement would be made by calling a United States bank, a non-bank primary government securities dealer or a major brokerage house and indicating the rate of interest and size of the desired repurchase agreement. Particular U.S. Government obligations to be held as collateral would then be identified and the Funds' Custodian Bank (presently Wilmington Trust Company of Wilmington, Delaware) would be notified. The securities would either be wired to the account of the Custodian Bank at the proper Federal Reserve Bank, transferred to a sub-custodian account of the Fund at another qualified bank or redesignated and segregated on the records of the Custodian Bank if the Custodian Bank is already the record holder of the collateral for the repurchase agreement. This procedure would occur on almost every trading day for each of the Funds which would



wish to enter into repurchase agreements.

Applicants state that the Funds pay approximately \$15.00 per transaction to their custodian bank for processing each repurchase agreement and that such fee is a processing fee only and is not related to the size of the transaction. During the twelve months ended November 1, 1985, these fees amounted to approximately \$22,680. Applicants represent that if the proposed joint account had been in place and the daily balances in the account were invested in a single repurchase agreement each business day, the estimated total transaction cost would have amounted to \$3,780, an aggregate savings of approximately \$18,900.

Applicants represent that the joint account would operate as follows: (a) A separate custodian cash account would be established into which each Fund would cause its uninvested net cash balances to be deposited daily; (b) cash in the joint account would be invested solely in repurchase agreements collateralized by suitable U.S. Government obligations, i.e., obligations issued or guaranteed as to principal and interest by the government of the U.S. or by any of its agencies or instrumentalities; (c) all investments held by the joint account would be valued on an amortized cost basis; (d) each Fund would use the average maturity of the joint account for the purpose of computing the Fund's average portfolio maturity with respect to the portion of its assets held in such account on that day; (e) in order to ensure that there would be no opportunity for one Fund to use any part of a balance of the joint account credited to another Fund, no Fund would be allowed to create a negative balance in the joint account for any reason, although it would be permitted to draw down its entire balance at any time; (f) each Fund would participate in the income earned or accrued in the joint account on the basis of the percentage of the total amount in the account on any day represented by its share of the account; (g) DMC would administer the investment of the cash balance in, and operation of, the joint account as part of its duties under its existing or any future investment management contract with each Fund and would not collect any additional fee for the management of the joint account; (h) the administration of the joint account would be within the fidelity bond coverage required by Section 17(g) of the Act and Rule 17g-1 thereunder.

Applicants believe that the proposed joint account is not distinguishable from

any other account maintained by a Fund with its custodian bank except that monies from the Fund could be deposited in it on a commingled basis. Applicants state that the account would not have any separate existence which would have indicia of a separate legal entity. Applicants further state that each Fund would automatically transfer its uninvested cash remaining at the conclusion of its daily trading activity into the joint account. Applicants represent that the account's sole function will be to provide a convenient and efficient way of aggregating what otherwise would be the one or more individual daily transactions for each Fund.

Applicants assert that it is difficult to predict: (i) The average size of the joint account, because the daily needs of each Fund will fluctuate considerably; (ii) the average percent of the joint account which any single Fund's participation would represent, because fluctuations in both size of the joint account and each Fund's needs are likely to be substantial; and (iii) the average percent of any single Fund's assets which might be deposited in the joint account, because monies remaining uninvested on any given day can fluctuate widely as the result of, for example, sales of portfolio securities required by unexpectedly large redemptions, failure of a sizeable purchase transaction to settle at the anticipated time of scarcity of appropriate portfolio securities for investment on any given day.

Applicants state that each Fund would participate in the joint account on an equal basis and in conformity with its fundamental investment objectives and restrictions, that DMC would have no monetary participation in the joint account, and that the assets of the Funds will continue to be held under proper bank custodial procedures. Moreover, Applicants state that the proposed joint account will allow the funds to negotiate higher rates of return, reduce errors by reducing the number of trade tickets and allow the Funds greater flexibility to cover excess cash near the end of each trading day.

Applicants represent that their respective governing bodies have considered the relative benefits to each fund and to DMC to be derived from the proposed joint account and determined that it would be beneficial to each Fund, that there is no basis on which to predicate greater benefit to one Fund than to another and that potential benefits to DMC in reduced administrative costs and duties are incidental compared to the potential

benefits to each Fund. Applicants further represent that the governing body of each Fund has determined that the operation of the joint account will be free of any inherent bias favoring one Fund over another, that the qualitative benefits to the Funds of the joint account outweigh any quantitative disparities in the allocation of economic benefits among such Funds and that the anticipated benefits flowing to each Fund will fall within an acceptable range of fairness. They further determined that future participation in such joint trading account by one or more funds which do not presently exist would not alter their conclusions with respect to participation by the present Funds and that it would be desirable to permit such future participation.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of the interest, the reasons for the request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 86-8051 Filed 4-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 15038; 812-6318]

#### **MacKay-Shields MainStay Series Fund et al.; Contingent Deferred Sales Load Application**

April 3, 1986.

Notice is hereby given that MacKay-Shields MainStay Series Fund ("Series Fund"), MacKay-Shields MainStay Tax Free Bond Fund ("Bond Fund", collectively with the Series Fund, the "Funds") and New York Life Securities Corp. ("NYLSEC") (Funds and NYLSEC, collectively, "Applicants"), 51 Madison Avenue, New York, N.Y. 10010, filed an application on March 14, 1986, and an amendment thereto on March 27, 1986,



for an order pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to permit the assessment and waiver of a contingent deferred sales load. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the applicable provisions.

Applicants represent that the Series Fund and the Bond Fund are each registered under the Act as open-end, diversified, management investment companies. Applicants state that NYLSEC, a wholly-owned subsidiary of New York Life Insurance Company, is the principal underwriter and distributor for the Funds, and that MacKay-Shields Financial Corporation ("MacKay-Shields") is investment adviser to the Funds. Applicants further state that NYLSEC's distribution expenses will be defrayed through a combination of plans of distribution adopted pursuant to rule 12b-1 under the Act and the proposed contingent deferred sales load.

According to the application, shares of the Funds will be offered to the public without an initial sales charge, but a contingent deferred sales load ("CDSL") will be imposed upon certain redemptions of shares if the proceeds therefrom are removed from the MacKay-Shields family of funds. If, however, the redemption proceeds are reinvested in another series of the Bond Fund or Series fund (an exchange based on relative net asset value of the securities to be exchanged, subject to a \$5 transaction fee for each exchange in excess of five during any twelve month period), the CDSL will be postponed. Applicants state that the CDSL will be assessed as a percentage of the amount redeemed that is subject to a CDSL, which percentage varies in accordance with the following table:

Year since purchase payment made	CDSL as a percentage of amount redeemed
First.....	5.0
Second.....	4.0
Third.....	3.0
Fourth.....	2.0
Fifth.....	2.0
Sixth.....	1.0
Seventh and thereafter.....	None

Applicants represent that the length of time shareholders will be deemed to have owned shares for purposes of determining the appropriate rate of the CDSL will be calculated from the date of purchase of shares of a series of the

Funds that imposes a CDSL, which are all series except the MacKay-Shields Money Market Fund ("Money Market Fund"). Moreover, holding periods will be tacked during exchanges among Funds resulting in a longer total holding period, and thus, a lower applicable CDSL rate.

Applicants represent that when a CDSL is imposed, it will be assumed that a redemption is made of shares held for the longest period of time within the applicable six year period. Investors who have deferred payment of the CDSL upon exchanges between Funds in the MacKay-Shields family of funds will be credited with the full holding period spanning ownership in each Fund since the purchase of shares in the Fund that originally imposed the CDSL. With respect to the Money Market Fund, initial investments therein will not be counted toward the holding period but exchanges into the Money Market Fund will be so counted.

Applicants state that the CDSL will be imposed at the time a redemption occurs if such redemption causes the value of the investor's account to fall below the total dollar amount of purchase payments made by the investor during the preceding six years. Applicants further state that no CDSL will be imposed to the extent that the net asset value of the shares redeemed does not exceed: (i) The current net asset value of shares purchased more than six years prior to the redemption, plus (ii) the current aggregate net asset value of shares purchased through reinvestment of dividends or distributions, plus (iii) increases in the net asset value of the investor's shares above the total amount of payments for the purchase of shares made during the preceding six years. Moreover, if the current net asset value of shares redeemed has declined below the shareholder's cost due to a Fund's performance, the CDSL will be applied to the current value rather than to the purchase price in order to avoid the anomaly of an investor withdrawing the full value of an account which has declined below its purchase price, yet paying a CDSL based upon the purchase price.

According to the application, in determining the applicability of a CDSL to each redemption, amounts representing increases in the net asset value above the amount of total purchase payments made within the last six years will be considered to be redeemed first. In the event the redemption exceeds such value, the next portion of the redemption considered redeemed will be the amount which represents the net asset value of the investor's shares purchased more than

six years prior to the redemption and/or shares purchased through reinvestment of dividends or distributions. Any portion of the redemption that exceeds the amount that represents such value—the value of shares purchased more than six years prior to the redemption, the value of shares purchased through reinvestment of dividends or distributions and the increase in value of all shares owned above the purchase price—will be subject to a CDSL.

Applicants also propose to waive the CDSL under circumstances delineated in the application. With respect to such waivers, Applicants undertake to take steps to ensure that shareholders entitled to waivers will resell Fund shares only to Applicants. Applicants submit that all the elements of their proposals are in the interest of the Fund's shareholders and are consistent with the policies underlying the Act. Applicants believe that when amounts attributable to the initial value of the shares purchased are redeemed, it is equitable to impose a CDSL to compensate NYLSEC for its sales efforts and distribution expenses incurred in connection with sales of shares. Applicants assert that the amount and timing of the CDSL are designed to promote fair treatment of all shareholders. Applicants represent that they will comply with the requirements of Rule 22d-1 under the Act in connection with any variations in, or eliminations of, the CDSL.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 27, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant(s) at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 86-8052 Filed 4-9-86; 8:45 am]

BILLING CODE 8010-01-M



[Release No. IC-15039; (File No. 812-6314)]

**Merrill Lynch Pacific Fund, Inc.; Filing of Application**

April 4, 1986.

Notice is hereby given that Merrill Lynch Pacific Fund, Inc. ("Applicant"), Box 9011, Princeton, New Jersey 08540-9011, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on March 6, 1986, requesting an order of the Commission that would exempt Applicant to the extent necessary from the provisions of section 12(d)(3) of the Act to permit it to acquire the securities of major Japanese securities companies, the securities of which are listed and publicly traded on the Tokyo Stock Exchange (First Section). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the text of the applicable provisions thereof.

Applicant's investment manager is Merrill Lynch Asset Management, Inc. ("MLAM"), a wholly-owned subsidiary of Merrill Lynch & Co., Inc. Merrill Lynch Funds Distributor, a wholly-owned subsidiary of MLAM, acts as the principal underwriter of the Applicant's shares. In accordance with its general investment policy, Applicant invests in equities of corporations domiciled in Far Eastern or Western Pacific countries, including Japan, Australia, Hong Kong and Singapore. Applicant proposes to include in its portfolio shares of any of the 12 major Japanese securities companies, which are: Cosmo Securities Co., Ltd., Dai-ichi Securities Co., Ltd., Daiwa Securities Co., Ltd., New Japan Securities Co., Ltd., The Nikko Securities Co., Ltd., The Nippon Kangyo Kakumaru Securities Co., Ltd., The Nomura Securities Co., Ltd., Okasan Securities Co., Ltd., Sanyo Securities Co., Ltd., Wako Securities Co., Ltd., Yamaichi Securities Co. Ltd., and Yamatane Securities Co. Ltd.

Applicant represents that Japanese companies with publicly-issued securities, including the identified securities companies, are required by the Japanese Securities and Exchange Law ("Law") to file with the Minister of Finance annual reports containing information relating to the company's objectives, stated capital, securities issued and financial position, the nature and state of its business operations, and such other information as the Minister may request. Amended reports must be filed with the Minister of Finance upon

the occurrence of any material change of information. The Law further requires that the financial statements which are contained in these annual reports be certified by a certified public accountant or an incorporated accounting firm which has no special interest in the reporting corporation. Applicant notes that the 12 major securities companies publish annual reports in English.

Japanese securities companies are subject to regulation as brokerdealers under separate provisions of the Law. Before a company may act as a broker, dealer, or underwriter of securities, or handle a public offering, it must apply for and obtain a license from the Minister of Finance. Before issuing a license the Minister must be satisfied that such company has sufficient financial resources and sufficient knowledge and experience to conduct the proposed business profitably and fairly, and that the proposed business is necessary and appropriate in light of economic conditions, such as the number of existing securities companies and the state of securities trading in the area. The Law authorizes the Minister of Finance to cancel a license if the securities company violates a statutory provision, administrative order, or a condition attached to its license, or if it is threatened with insolvency.

Japanese securities companies may not engage in businesses other than those which are securities-related without Ministerial approval and may not act as both principal and broker in the same transaction. All securities companies must file business reports with the Minister of Finance within two months after the close of the business year, and if the Minister deems it necessary and appropriate in the public interest or for the protection of investors, he may cause competent officials of the Ministry to inspect the business condition or financial position, or accounting books, documents or other articles of the securities corporation. The Minister is authorized to order a securities company to alter its method of business or take other measures which the Minister finds appropriate in the event that the Minister finds that the company's ratio of total debt to net assets is excessive, that the company's borrowing or lending position is unsound, or that such corrective measures are necessary in the public interest or for the protection of investors.

The shares of capital stock of the 12 major Japanese securities companies are listed on the Tokyo Stock Exchange (First Section). In terms of both the total dollar transaction volume and the total

market value of equity shares of domestic companies listed, the Tokyo Stock Exchange ranks second in the world, surpassed only by the New York Stock Exchange. In addition, the criteria which must be satisfied for listing on the Tokyo Stock Exchange include a minimum of 10 million listed share (20 million for companies whose main business is outside Tokyo); 2,000 shareholders (as many as 3,000 shareholders depending upon the number of shares over 20 million outstanding); corporate existence of at least five years; net tangible assets of Y1,500 million and net tangible assets per share of Y100; net pre-tax profits for the last three years of Y200 million, Y300 million and Y400 million, respectively; and dividends of Y5 per share for the last three years. More seasoned listed stock are assigned to the First Section of the Tokyo Stock Exchange if they meet the following criteria: at least 20 million listed shares; capital stock of Y1 billion; 3,000 shareholders holding no less than 500 nor as much as 50,000 shares; shareholders of 500 to 50,000 ("float") shares must account for more than 3 million shares plus 25 percent of the total listed shares (if more than 60 million shares are listed the float must total more than 12 million shares plus 10 percent of the total listed); an average monthly trading volume for three months of 200,000 shares; and dividends for each of the last three years of Y5 per share. These requirements are comparable, in terms of share distribution, total market value and earning power, to those imposed by the New York and American Stock Exchanges, by the NASD for eligibility for the NASDAQ system and by the Board of Governors of the Federal Reserve System for inclusion on the OTC margin list, Applicant states.

Section 12(d)(3) of the Act, in pertinent part, prohibits registered investment companies from acquiring any interest in the business of a broker, dealer, or underwriter. Rule 12d3-1 under the Act provides, in pertinent part, that a registered investment company may purchase securities issued by companies deriving more than 15% of their gross revenue from securities-related activities provided certain quantitative and qualitative conditions are satisfied. The "quantitative" requirements are met if, immediately after the acquisition, the investment company has not invested more than 5% of the value of its total assets in the target company's securities and does not own more than 5% of the outstanding equity securities of the class acquired, or more than 10% of the outstanding



principal amount of the issuer's debt securities. The "qualitative" condition of Rule 12d3-1 requires that the stock acquired by a "margin security" as defined in Regulation T promulgated by the Board of Governors of the Federal Reserve System, which includes any security listed on a national securities exchange, or an over-the-counter security designated as a margin stock by the Federal Reserve Board. Because only securities the principal market for which are in the United States can qualify as "margin securities" as required by Regulation T, the securities of the above-identified Japanese securities companies could not be acquired by Applicant within the latitude afforded by Rule 12d3-1, without an exemption from section 12(d)(3) of the Act.

In support of this exemptive request, Applicant states that, with one exception, each of the conditions set forth in Rule 12d3-1 are satisfied under its proposal to purchase shares of the 12 major Japanese securities companies named above. In particular, Applicant asserts that the availability of annual reports disseminated by these firms will readily enable Applicant to calculate the 5% maximum purchase of outstanding securities requirement. It is also stated that public information available in Japan concerning the major Japanese securities firms is equivalent to information available in Japan about other Japanese issuers that are listed on the Tokyo Exchange and in which Applicant has regularly invested. Applicant represents, in addition, that it does not currently intend to invest in any debt securities issued by the named securities firms, and that should this policy change, Applicant's board of directors will adopt standards defining the minimum investment grade for any debt security which Applicant proposes to acquire. Applicant further states that it will readily be able to monitor its acquisitions to assure that it does not have more than 5% of the value of its assets invested in a particular Japanese firm's securities.

Applicant further states that the above named Japanese securities firms are of a size and quality comparable to U.S. securities firms which meet the requirement of Rule 12d3-1(b)(4), and that in accordance with paragraph (c) of Rule 12d3-1, which prohibits the registered investment company from acquiring any security issued by its investment adviser, promoter, or principal underwriter, or by any affiliated person of the foregoing that is a securities-related business, none of the identified 12 major Japanese broker-dealers engages in the distribution of

Applicant's securities, or acts or is affiliated with Applicant's investment manager. Therefore, it is stated, Rule 12d3-1 will be complied with in this regard.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than April 29, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,  
Secretary.

[FR Doc. 86-8053 Filed 4-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23082; File No. SR-DTC-77-10]

### Self-Regulatory Organizations; Order Partially Approving a Proposed Rule Change; Depository Trust Co.

#### I. Summary

This order concerns one aspect of securities depository fees for inter-depository book-entry movements in connection with securities settlements. Other aspects of inter-depository services and the fees for those services are discussed in Securities Exchange Act Release No. 23083.

The Depository Trust Company ("DTC") has filed with the Commission a proposed charge to the National Securities Clearing Corporation ("NSCC") for inter-depository book-entry movements in connection with the settlement of securities transactions by NSCC and other clearing corporation members. The Commission solicited comments on the proposed fee, most recently in December 1983.<sup>1</sup> This order approves the proposed fee.

<sup>1</sup> See Securities Exchange Act Release No. 20461 (Dec. 7, 1983), 48 FR 55654 (Dec. 14, 1983); Securities Exchange Act Release No. 14109 (Oct. 27, 1977), 42 FR 58991 (Nov. 14, 1977).

#### II. Discussion

In File No. SR-DTC-77-10, DTC proposes to charge NSCC \$40 for items delivered to, or received by, NSCC through depository interfaced accounts in connection with Regional Interface Organization ("RIO") settlements. Among other things, RIO enables participants in different clearing corporations to ship matched trades at one clearing corporation to another clearing corporation for settlement.<sup>2</sup> No commenters discussed this proposed fee.

The Commission believes that CNS/RIO delivers or receives effected by DTC for NSCC are "linked services," as discussed in Securities Exchange Act Release No. 23083.<sup>3</sup> DTC performs unreciprocated core tasks for NSCC that enable NSCC to offer its participants the crucial ability to settle CNS/RIO obligations. Moreover, DTC's non-NSCC participants are not involved in RIO processing. In addition, depositories other than DTC charge their affiliated clearing corporations for tasks performed on behalf of the affiliated clearing corporations in connection with the RIO settlements. Finally, the Commission has no basis for concluding that the \$40 per-movement fee is an unreasonable charge to NSCC for DTC's processing of RIO settlements.<sup>4</sup>

<sup>2</sup> Once a compared RIO trade is scheduled for settlement, clearing corporation A, on behalf of its participant, will have a settlement obligation with clearing corporation B, also acting on behalf of its participant. Clearing corporations A and B then settle their obligations to deliver or receive securities through depository book-entry interface movements. Because clearing corporations do not custody securities, each clearing corporation uses a depository account to deliver or receive continuous net settlement ("CNS") RIO obligations. For example, if NSCC has a CNS/RIO obligation to deliver securities to the Midwest Clearing Corporation ("MCC"), NSCC would instruct DTC to deliver securities from its DTC account to the Midwest Securities Trust Company ("MSTC"), for MCC, by book-entry via the depository interface accounts at DTC and MSTC.

<sup>3</sup> A "linked service" in the depository segment of the National Clearance and Settlement System is an automated connection that enables one depository (the "using depository") to use the facilities of another depository (the "servicing depository") to make a particular service available to the using depository's participants. The servicing depository performs the core tasks necessary to deliver the linked service to the using depository's participants. Linked services either are not provided directly by the using depository to its participants or do not involve reciprocal core tasks at the using depository.

<sup>4</sup> DTC currently collects a total of \$27 from NSCC and DTC's NSCC participants for processing each CNS securities settlement, and it collects \$42 from DTC participants (without considering the proposed surcharge and assuming the instruction was submitted through an automated medium) for each third party inter-depository book-entry movement. Because DTC's work in processing RIO movements for NSCC is essentially the same as the work in

Continued



### III. Conclusion

For the reasons discussed above, the Commission is approving that part of File No. SR-DTC-77-10 that proposes a \$.40 fee to NSCC for CNS/RIO deliveries and receives.<sup>5</sup> As discussed in a companion release issued today, however, the Commission has instituted proceedings under the Exchange Act in order to determine whether to approve or disapprove other proposed fees contained in File No. SR-DTC-77-10.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed \$.40 fee to NSCC (as described in File No. SR-DTC-77-10) be, and hereby is, approved.

By the Commission.

Dated: March 31, 1986.

John Wheeler,

Secretary.

[FR Doc. 86-8045 Filed 4-9-86; 8:45 am]

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[Release No. 23080; File No. SR-DTC-85-6]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change; Depository Trust Company

On December 18, 1985, The Depository Trust Company ("DTC") filed a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") that would revise its fee schedule for services to participants. Notice of the proposal appeared in the Federal Register on January 26, 1986.<sup>1</sup> The Commission received two comment letters addressing one aspect of the proposal. As discussed below, the Commission is approving DTC's proposed rule change.

### I. Introduction

The proposal is a comprehensive revision of DTC's fee schedule for major DTC services DTC has not made such a revision in its fee schedule since 1980.<sup>2</sup>

processing third-party deliveries, the level of DTC's proposed fee appears to be both reasonable and equitable.

<sup>5</sup> The Commission notes, however, that for NSCC and other clearing corporations, CNS/RIO movements represent inter-clearing agency interface movements. In accordance with prior Commission orders, clearing corporations must mutualize the cost of those movements and CNS/RIO operations generally. See Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916 (January 21, 1977) and Securities Exchange Act Release No. 17343 (November 26, 1980), 45 FR 80224 (December 3, 1980).

<sup>1</sup> See Securities Exchange Act Release No. 22770 (January 6, 1986), 51 FR 3527-39 (January 26, 1986). The text of DTC's proposed fee changes appeared at 51 FR 3527-32.

<sup>2</sup> See File No. SR-DTC-80-5; Securities Exchange Act Release No. 17342 (November 26, 1980), 45 FR 80223 (December 3, 1980).

although it has filed numerous miscellaneous fee changes. Before filing the instant proposal, DTC circulated a test fee schedule to its participants for comment. In response, DTC received 58 comments, which are summarized below. Based on those comments DTC made substantial changes to the test schedule and filed the proposal under consideration today. The Commission received two comment letters in response to DTC's proposal as filed with the Commission. These comments are also summarized and discussed below.

### II. Description

#### A. DTC Services

DTC is a user-governed securities depository registered with the Commission as a clearing agency. DTC is the largest registered securities depository based on deposits, safekeeping approximately \$2 trillion worth of securities on behalf of 171 participant banks and 335 broker-dealers.

DTC offers participants a variety of depository services. Among other things, DTC acts as a custodian for securities; performs computerized book-entry delivery and physical withdrawal of securities immobilized in its custody; and performs computerized book-entry pledges of custodied securities. Ancillary Services include: (i) Book-entry distribution of securities offered in public underwritings; (ii) a dividend reinvestment service; (iii) a third-party pledge system in which Options Clearing Corporation ("OCC") members may pledge to OCC securities on deposit at DTC that underlie options; (iv) a payment order service that allows participants to use their DTC accounts to settle money payments that are associated with securities transactions that occur outside the depository; and (v) a voluntary offering program for book-entry delivery of securities tendered to bidders' agents in tender offers.

DTC also performs services for other securities depositories, notably as facilities manager for the National Institutional Delivery System ("IDS" or "NIDS").<sup>3</sup> In addition, as the "qualified

<sup>3</sup> In a typical institutional trade, an investment manager instructs a broker to execute a trade. After executing the trade, the broker sends to the investment manager a written statement, called a confirmation or "confirm," specifying the terms of that trade. See Rule 10b-10 (17 CFR 240.10b-10). If the confirm matches the investment manager's instructions, i.e., if the broker executed the trade properly, the investment manager will issue instructions, called an "affirm," to the custodian bank authorizing the bank to receive or deliver securities against payment to or by the executing broker. To promote timely customer-side settlement

securities depository" of the National Securities Clearing Corporation ("NSCC"), DTC performs critical functions on behalf of NSCC in connection with NSCC participant services. Finally, DTC, like other securities depositories, operates a Participant Terminal System ("PTS") consisting of a network of computer terminal stations located in participants' offices that enable participants to communicate instructions and inquiries to DTC and to receive messages and reports from DTC.

DTC provides securities processing and custodial services for participants in connection with three major securities product groups: (1) Registered corporate securities (debt and equity); (2) registered municipal securities; and (3) bearer municipal securities.<sup>4</sup> DTC's proposed fee schedule relates primarily to services for these groups and includes fees covering deposits, safekeeping collection of dividend and interest payments, book-entry transfers and pledges of securities in its custody, and certificate withdrawals.<sup>5</sup> DTC's proposal also includes fees for collateral services, such as NIDS processing services, reorganization services (including tender offer processing), underwriting services and PTS.

#### B. DTC's Proposal and Rationale

DTC explains in its filing that the proposal attempts to set each service fee as close as possible to DTC's cost in delivering that service.<sup>6</sup> DTC indicates

of institutional trades, DTC, in cooperation with other self-regulatory organizations, developed the NIDS. To facilitate its use, other self-regulatory organizations adopted rules (such as New York Stock Exchange Rule 387) designed to require investment managers, brokers and custodian banks to confirm, affirm, and settle most institutional trades through the facilities of a securities depository. The NIDS, in conjunction with depository interfaces, permits most institutional trades to be quickly, accurately and cheaply confirmed, affirmed and settled by a net book-entry movement and/or a single money obligation. See Securities Exchange Act Release No. 19227 (November 9, 1982), 47 FR 51558 (November 16, 1982).

<sup>4</sup> Since 1983, most municipal securities have been issued widely in registered form due to federal tax law changes. See Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, 96 STAT 324 (1982). DTC first offered custody service for bearer bonds in late 1981 and has increased dramatically the number of eligible bearer issues in the last two years.

<sup>5</sup> DTC offers two types of withdrawals: Certificates on demand (or "CODs") and withdrawals-by-transfer (or "WTs"). A COD provides a negotiable certificate registered in DTC's nominee name and a WT provides a certificate registered in whatever name the withdrawing participant chooses.

<sup>6</sup> The original fee schedule of DTC's predecessor organization was not based solely on costs but was

Continued



that it believes its fees should be cost-based, absent policy considerations that justify limited exceptions. To that end, DTC states that it now plans to adjust its basic fee schedule each year so that, through modest changes over several years, DTC's service fees will become largely cost-based. In its filing, however, DTC notes that certain service fees have been set deliberately above or below cost to further objectives DTC views as consistent with the Act. The most significant aspects of the proposed fee schedule revision are described in detail below.<sup>7</sup>

#### 1. Less-Active Issue Surcharges

DTC proposes to establish a surcharge fee for deposit, withdrawal and safekeeping services involving "less-active" corporate and municipal securities issues. The proposal would establish a \$.60 surcharge for each deposit in an issue that, during the preceding three months, averaged fewer than two deposits each day that deposits were made in that issue. The proposal would establish a surcharge of \$1.80 on each withdrawal-by-transfer ("WT") instruction in issues that, during the preceding three months, averaged fewer than two transfer assignments each day that WTs were made in that issue. Finally, the proposal would establish a surcharge of \$.25 on long positions in corporate issues held for 15 or fewer participants and a surcharge of

\$.75 on long positions in registered and bearer municipal securities issues held for two or fewer participants. Newly eligible securities issues would be exempt from surcharges for the first three months following the first deposit in those issues. Bearer bond deposits and withdrawals would not be subject to the deposit and WT surcharges because these issues do not require processing by transfer agents.

DTC estimates that approximately 43% of the corporate securities issues and 42% of the registered and bearer municipal securities issues eligible for deposit at DTC would be subject to inactivity surcharges on long positions. Approximately 31% of the average daily deposits (76% of the issues with deposit activity) and 28% of average daily withdrawals (71% of the issues with withdrawal activity) would be subject to inactivity surcharges.

DTC states that these surcharges are a move towards cost-based fees for less-active issues. DTC states that less-active issues create higher per-unit deposit and withdrawal costs resulting from fixed costs for securities shipments to transfer agents regardless of whether such a shipment contains one or many deposits or withdrawals.<sup>8</sup> Similarly, DTC believes that less-active issue surcharges for long position servicing are justified by greater costs associated with establishing accounts for new issues and monitoring and controlling those issues.

In explaining its rationale for the proposed less-active issue surcharges, DTC notes that it has increased by ten-fold in five years the number of DTC-eligible securities issues. DTC eligibility in turn enables cost-saving use of Continuous Net Settlement ("CNS") Systems and book-entry transfer capabilities. DTC believes that its participants that use DTC for processing less-active issues should pay cost-based fees for that processing and not be subsidized with revenues generated from active-issue processing.<sup>9</sup> DTC states that it plans to continue its liberal eligibility policy and expects that the number of less-active issues on deposit will increase proportionately.

#### 2. Above and Below-Cost Service Fees

DTC proposes to retain above-cost fees for book-entry movements involving registered corporate securities and increase, generally, the above-cost

fees for book-entry movements involving registered and bearer municipal securities. The excess revenues generated by these fees would be used to offset revenue shortfalls resulting from below-cost fees in other service areas. DTC also proposes to reduce the fees for ID deliveries, excepting registered municipal securities, resulting in a small revenue shortfall for this service. In addition, DTC proposes to increase deposit and withdrawal fees that, although still below-cost, are designed to encourage participants to use DTC's services in the most efficient manner.

a. *Deliver Order Fees.* Deliver orders are book-entry deliveries that reflect activity among banks and brokers for customer account transfers, stock loans and other securities settlements, such as trades settling through NSCC's trade-for-trade and balance-order accounting systems. DTC's general deliver order fees do not cover securities deliveries associated with NSCC's CNS operations<sup>10</sup> or, as discussed below, securities deliveries through DTC's ID system. DTC generally assesses lower fees in connection with those deliveries because they are automated and require significantly less handling by DTC to process. The proposed deliver order fees would cover most deliveries involving municipal securities because those trades are not processed in NSCC's CNS accounting operation.

(i) *Deliver Order Fees for Corporate Securities.* DTC proposes essentially unchanged deliver order fees for corporate securities of \$.30 and \$.55 for each delivery, depending on the time the delivery is sent, and a \$.40 fee for each receipt. For deliver order instructions on paper, DTC proposes changing the current fee of \$1.70 for each delivery and receipt to \$2.50 for each delivery and \$.40 for each receipt. DTC states that these fees will generate excess revenue that will be used to recoup a portion of revenue shortfalls from continuing below-cost fees for deposits and withdrawals-by-transfer.<sup>11</sup>

(ii) *Deliver Order Fees for Registered Municipal Securities.* DTC proposes, for the first time, to distinguish between registered corporate and municipal securities deliver orders. The proposal would increase by approximately \$.25 DTC's current deliver order fees for

designed to encourage depository use through lower-than-cost deposit and withdrawal fees. (See testimony of William T. Dentzer, Jr., Chairman of DTC, Hearings into the Establishment of a National Clearance and Settlement System (March 6-10, 1978) at 772-74 and 784-85). In 1980, DTC moved its fees for most major services much closer to per-unit costs. That effort did not produce a full correlation of fees with costs, however, because DTC wanted to avoid "unduly discourag[ing] use of the depository system for book-entry settlement and immobilization of securities." See File No. SR-DTC-80-5, Exhibit 2, at 2, approved in Securities Exchange Act Release No. 17342 (Nov. 26, 1980), 45 FR 80223 (Dec. 3, 1980).

<sup>7</sup> DTC's proposal also includes a number of cost-based fee changes that have not been the subject of adverse comment. The most significant of those changes are as follows: The fee for securities pledges, releases or pledge substitutes submitted via PTS is decreased to \$.22 from \$.35; for paper input, that fee is increased to \$.54 from \$.42. The charge for NIDS dial-in terminal service for confirmations is set at \$250.00 per year, up from \$120.00; and for NIDS confirmations plus ability to dial in to DTC's value added network the fee is \$400.00 per year, up from \$120.00. DTC's reorganization fees are set at \$20.00 to \$100.00 for conversions based on the number of shares, \$11.00 for unit swingovers, \$20.00 per position for mandatory exchange/redemptions, \$20.00 per transmittal letter for voluntary exchanges/tender offers, and \$20.00 per exit COD. DTC's monthly usage charges have been raised to \$400.00 per month, up from \$320.00, and \$140.00 per month for each account over five. Usage charges for pledgee bank accounts are \$320.00 per month for non-participants and \$140.00 per month for participants. The filing also includes minor miscellaneous charges in DTC's PTS reporting fees.

<sup>8</sup> DTC states that some deposit costs may be as low as \$.03 for active issues versus \$1.30 for less-active issues.

<sup>9</sup> DTC states in its filing that less-active issue surcharges would recover currently about 55% of the estimated costs of processing those issues.

<sup>10</sup> For CNS book-entry movements, DTC assesses NSCC and the affected DTC participant \$.09 per movement. The proposal would increase this fee by \$.01 to both NSCC and the affected DTC participant.

<sup>11</sup> DTC's proposal includes increased fees for deposits and WTs and surcharges for less-active issues in these services. See discussion *infra* accompanying notes 16-19.



registered municipal securities, now priced the same as corporate securities.<sup>12</sup> DTC intends to use the excess revenues from these fees to offset partially revenue shortfalls in bearer bond interest collection services.<sup>13</sup> DTC also states that these above-cost fees are intended to permit cost recovery in DTC's overall municipal securities program to be proportional to cost recovery in DTC's corporate securities program.

(iii) *Deliver Order Fees for Bearer Bonds.* DTC proposes to set bearer bond deliver order fees at \$1.00 above cost or \$1.50 for each delivery, \$1.40 for each receipt and \$1.25 for each ID System delivery or receipt.<sup>14</sup> DTC states that these fees will continue to generate excess revenues to compensate for revenue shortfalls in bearer bond deposit and withdrawal services and, in addition, will compensate for revenue shortfalls in bearer bond interest collection services.

b. *ID System Report and Delivery Fees.* DTC proposes to reduce ID system delivery fees for registered corporate issues and for bearer bonds and increase those fees for registered municipal securities.<sup>15</sup> DTC's test fee schedule suggested lower ID confirm/affirm fees but DTC now proposes no change, resulting in above-cost ID confirm/affirm fees. DTC intends to use the excess ID confirm/affirm revenues to offset revenue reductions that would result from DTC's proposed reductions in ID delivery fees.<sup>16</sup> DTC believes that

below-cost ID delivery fees would create an incentive for participants to increase the percentage of trades affirmed and delivered in the ID system.

c. *Deposit Fees.* DTC's proposed deposit fees for registered securities range from \$1.00 to \$40.00 depending on the time of day the deposit is made. A surcharge also would apply to less-active issues.<sup>17</sup> DTC implemented deposit time zones in 1980 to encourage earlier deposits and thereby ease settlement adjustments. DTC's proposal would retain above-cost deposit fees for late zone deposits to continue to encourage early deposits, and retain below-cost deposit fees for early zone deposits to encourage immobilization and depository use. For bearer bonds, DTC proposes to increase deposit fees to \$5.00 from \$4.00 plus a fee after the first ten certificates with a maximum charge of \$13.00, up from \$12.00. DTC states that the proposed bearer bond deposit fee would now substantially recover service costs and will partially offset lower bearer bond withdrawal fees from the test schedule.

d. *Urgent Withdrawal (COD) Fees.* DTC proposes an increase in overnight COD fees for registered securities to \$8.00 per instruction by PTS and \$9.50 for paper instructions, up from \$6.00 and \$6.75 respectively. For same-day COD's, DTC proposes an additional increase to \$14.00 for PTS instructions and \$15.50 for paper instructions. DTC also proposes similar increases in bearer bond COD fees.<sup>18</sup> DTC states that its proposed withdrawal fees reflect the high unit cost of the service and are intended to encourage automated input and discourage urgent same-day withdrawals.

e. *Withdrawal-by-Transfer Fees.* DTC's current WT fees are \$1.15 for automated instructions and \$2.05 for papers instructions. The proposal would decrease to \$1.05 the fee for automated WTs and increase to \$2.25 the fee for paper instruction. The proposal also would add surcharges to WT fees for less-active issues.<sup>19</sup>

DTC also proposes fees for a new DTC service that enables DTC participants to inquire through PTS terminals about the status of delayed transfers. DTC proposes a fee of \$.08 per PTS inquiry for this service. For hard

copy transfer inquiries, DTC proposes a \$12.00 fee or no charge if the inquiry concerns an item aged 45 days or more and no explanation is available through PTS. DTC states that its WT fees are designed to encourage PTS submission and recover the higher costs of processing paper instructions.

f. *Uniform Instruction Reject Fees.* DTC proposes to establish a uniform reject fee for deposits, WT's, COD's and book-entry deliveries that cannot be processed because of participant error. If a participant's instruction error rate in any service area is less than 0.5% for the month, no fee would be assessed. If participants exceeded this 0.5% threshold, DTC would assess a scaled fee of \$10.00-\$25.00 for each instruction rejected because of participant error. The maximum fee would apply to participants with monthly error rates in excess of 5.0%.

### 3. Legal Deposits

DTC proposes to reduce its legal deposit fee from \$10.00 to \$9.00 and to establish a volume discount based on the number of legal deposits in all securities issues during the month. The per-deposit fee would be set at \$9.00 for the first 1,500 legal deposits during the month, \$6.00 for the next 1,000 deposits and \$3.00 for each deposit over 2,500.<sup>20</sup>

### 4. Dividend, Interest and Reorganization Payments

The proposal would increase the fees for dividend (cash or stock), interest and reorganization payments by \$.40 per credit for cash items and by \$.30 per credit for stock dividends. As proposed in May 1985, the fee for stock dividends would have been \$1.50 per credit plus \$.03 per 100 shares and \$1.50 per cash interest or dividend credit. In lieu of these increases, DTC decided to recover approximately \$3.7 million of its dividend processing costs by reducing the total monthly refund of dividend and interest investment income to participants.<sup>21</sup>

### 5. Underwriting Service Fees

The proposal would increase the minimum corporate underwriting fee by \$100 per issue and maintain the maximum fee per issue at \$2,000. The proposal would increase the minimum

<sup>12</sup> The proposal includes an increase from \$.26 to \$.50 in the ID System delivery fee for registered municipal securities. For deliver orders submitted on paper, DTC proposes a fee of \$.275 for each delivery and \$.65 for each receipt, up from \$.170 and \$.40 respectively.

<sup>13</sup> In a letter to Division staff, DTC notes that deliver order fees for registered municipal securities have been priced \$.25 above cost and deliver order fees for bearer bonds \$1.00 above cost. DTC states that \$2,247,445 in above-cost revenues would be generated by those fees. DTC states that the projected annual shortfall in bearer bond interest collection revenues without the surcharge would amount to \$6,043,740, with a remaining shortfall after implementing those fees of \$3,796,295. See File No. SR-DTC-85-6.

<sup>14</sup> See *id.*

<sup>15</sup> DTC's test schedule proposed ID delivery and receipt fees of \$.25 and \$.50, respectively. The proposed below-cost fees are \$.25 for both delivery and receipt. For registered municipal securities, however, DTC proposes an increase to \$.50 from \$.26.

<sup>16</sup> In its test schedule, DTC proposed to lower ID confirm/affirm fees to \$.22 from \$.25 but now proposes a \$.25 fee. In its Letter to Division staff, DTC states that the proposed fees for ID confirm/affirm services would generate \$740,534 in above-cost revenues. Those revenues also would be used for previously unplanned DTC-sponsored training and education seminars to assist book-entry settlement of municipal securities transactions. See File No. SR-DTC-85-6.

<sup>17</sup> See discussion in text following note 7, *supra*.

<sup>18</sup> Currently, DTC bearer bond COD fees are \$.60 for PTS instruction and \$.75 for paper instruction. The proposal would increase these fees to \$.85 and \$1.05, respectively, for overnight CODs and \$1.70 and \$2.20, respectively, for same-day CODs. A per certificate and maximum total charge also apply.

<sup>19</sup> See discussion in text following note 7, *supra*.

<sup>20</sup> The Commission notes that the Federal Register notice of DTC's proposed fees for legal deposits contains several misprints. The Federal Register printings of \$60.00 and \$30.00 should be \$6.00 and \$3.00, respectively. See 51 FR at 3528.

<sup>21</sup> DTC attempts to collect dividend and interest payments on payable date in same-day funds, invests those funds overnight and rebates the investment income to participants generating that income *pro-rata* on a monthly basis.



fee for registered municipal securities underwritings by approximately \$250 and increase the maximum fee to \$2,000 from \$1,000. The proposal would also establish a flat fee of \$100 for underwritings of certificates of deposit and a \$200 fee for all book-entry only issues. The proposal would continue to permit DTC to charge underwriters for any unusual expenses. Finally, the proposal would establish a \$500 surcharge to the managing underwriter in any type of underwriting for which DTC incurs special consultation and development costs, as well as a \$350 surcharge to the managing underwriter in those issues with put option features.

DTC explains that certificates of deposit and book-entry underwritings require minimal processing, thus justifying the lower fees. The increased fees for corporate and municipal securities underwritings reflect DTC's higher costs associated with certificate processing. These underwriting fees would no longer distinguish between Fast Automated Securities Transfer ("FAST") and non-FAST issues, as savings from FAST issues are offset by additional costs in balancing the position with the FAST transfer agent. The higher fees for municipal securities underwritings are intended to recover DTC's higher processing costs for these issues because they generally are more complex and often include multiple CUSIP numbers for serial bonds in the underwriting.

DTC explains that the proposed surcharges for put option bonds are intended to recover DTC's costs associated with reviewing the official statement and establishing a data base through which put periods are monitored. DTC similarly explains the \$500 surcharge for underwritings requiring special consultation or development efforts as an attempt to recover some of the costs associated with those issues. The \$500 surcharge, DTC states, will be applied to initial and subsequent underwritings of the particular type of issue generating those costs until they are fully recovered.

#### *C. Comments of DTC's Test Fee Schedule*

DTC received 58 comments on its test fee schedule.<sup>22</sup> While virtually all of the

commenters supported DTC's general principal of basing fees on costs, the vast preponderance of the commenters objected to one or more specific aspects of the test fee schedule, in some areas urging that fees be less cost-based and in other areas closer to cost. Summarized below are the comments DTC received and DTC's responses.

Many commenters noted that DTC's practice of estimating transaction volume on a "very conservative" basis has resulted in higher than necessary fees and year-end rebates to participants of excess revenues. DTC states that it has revised its estimates for 1986 to reflect "somewhat conservative" transaction volumes and reduced fees from the test fee schedule accordingly. Based on the comment letters, DTC believes its participants are willing to run a greater risk of a general surcharge on monthly billings should transaction volume estimates prove to be high. Also in response to commenters, DTC states in its filing that excess revenues from high transaction volume under the proposed fee schedule would be refunded to participants more frequently than in the past.

Commenters also objected to the magnitude of fee increases in the test schedule for certain fees, particularly for the following services: Deliver orders, reorganization services, bearer bond redemptions, urgent withdrawals, bearer bond interest collection and stock dividend payments. DTC states in its filing that in response to those comments it has determined to impose more moderate fee increases over time and, accordingly, has proposed fees in those areas that are lower than those of the test schedule.

The aspect of the fee proposal that engendered the greatest controversy was DTC's proposed less-active issue surcharges. Many commenters objected to the imposition of any surcharges for low volume issues; others agreed with the concept but suggested different volume cut-offs or mutualization across different classes of issues. In response, DTC has reduced the proposed less-active issue surcharges on deposits and WT's from the levels suggested in the test schedule.<sup>23</sup> Several commenters

were particularly concerned about the imposition of surcharges on municipal securities at a time when immobilization of municipal securities in depositories is still in its early stages. These commenters asserted that the surcharges could force less-active issue settlement processing outside the depository and clearing corporations' CNS systems. DTC disagreed, however, asserting that the cost of ex-depository, physical processing is so great that the assertedly small proposed surcharges would not cause such an effect.

Other commenters on the less active surcharges suggested that, although higher fees for registered municipal securities or bearer bonds, as opposed to corporate securities, would appear to be cost-justified and appropriate, surcharges on some corporate issues and not others were objectionable. Those commenters suggested in effect that fees ought to be mutualized within the major securities product groups without distinguishing between less- and more-active securities issues. DTC responded that less-active issues cost more to process and the proposed surcharges are an attempt to move towards cost-based fees for less-active issues. DTC also stated its belief "that the many DTC users who do not trade in or hold such [less-active] issues should not be asked to share in the costs generated by those who do."

Several comments believed that the burden of the less-active issues, surcharges would fall unevenly, imposing particular costs on broker-dealers, municipal securities dealers or retail-oriented firms. In response to these comments, DTC conducted a study of the effects of the surcharges on small regional firms and OTC broker-dealers.<sup>24</sup> Out of a sample of 50 such firms, it found that only 27 firms would have been worse off during the review period under the proposal and that the largest variance of this nature on any of the sample participants' monthly bills would have been less than \$250.00.

#### *D. Comments to the Commission*

The Commission received two comment letters,<sup>25</sup> which expressed general opposition to DTC's less-active issue surcharges. Both commenters believed that the proposed less active issue surcharges would discourage the immobilization of securities certificates of less-active issues, particularly less-

<sup>22</sup> See File No. SR-DTC-85-6. DTC received comments from 45 DTC participant banks and broker-dealers, 6 industry associations, and 2 securities self-regulatory organizations. In its filing, DTC summarized those comments, noted changes that were made to the test schedule in response to comments and responded generally to the principal comments.

<sup>23</sup> As proposed in May 1985, the surcharge for deposits and WT's in issues that averaged one deposit or assignment would have been \$1.00 and \$3.00, respectively. The surcharge for deposits and WT assignments for issues averaging two deposits or WT assignments would have been \$0.30 and \$1.25, respectively. DTC now proposes only one surcharge fee for deposits and assignments in issues that average fewer than two or fewer deposits or WT assignments, set at \$0.60 and \$1.80, respectively.

<sup>24</sup> See File No. SR-DTC-85-6.

<sup>25</sup> See File No. SR-DTC-85-6: comments from Merrill Lynch, Pierce, Fenner & Smith ("Merrill Lynch"); and Alex. Brown & Sons, Inc. ("Alex Brown").



active municipal securities issues. Merrill Lynch argued that the less-active issue surcharges could exceed physical processing costs and therefore discourage clearance and settlement of those issues in the National System. Alex Brown contended that the proposed surcharges would have a negative impact on the municipal securities industry's efforts to effect automated and centralized comparison and settlement of municipal securities transactions in registered clearing agencies. In addition, even if increased physical processing did not result from the surcharges, both commenters asserted that the additional processing costs for less-active issues would discriminate inappropriately against issuers, dealers and investors in less-active issues.

Merrill Lynch also noted its belief that the proposed fee schedule, by using above-cost deliver order fees to subsidize below-cost deposit and withdrawal fees, would discriminate against brokers, as opposed to banks, because brokers generate greater deposit and withdrawal activity compared to banks, who traditionally hold securities on deposit for their customers on a more continuous basis. For those reasons, Merrill Lynch believed the proposed less-active issue surcharges are inconsistent with the Act, and section 17A in particular. Merrill Lynch believed that mutualization of fees between less-active and active issues within the major securities groups, as is DTC's current practice, better facilitates the goals of the Act.

### III. Discussion

#### A. Statutory Standards

Under section 19(b)(2) of the Act, the Commission must approve DTC's proposed rule change if it finds DTC's proposal is consistent with the Act and Commission rules applicable to registered clearing agencies. The Commission may not approve DTC's proposal if it is unable to make such a finding.

Section 17A of the Act is of particular significance in reviewing proposed rule changes of registered clearing agencies. Section 17A(b)(3) provides, among other things, that a clearing agency shall not be registered by the Commission unless the Commission determines that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants and are designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and

to remove impediments to and perfect the mechanism of a national system. Section 17A(b)(3)(I) provides that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act; section 17A(b)(3)(F) requires that clearing agency rules not be designed to permit unfair discrimination among participants in the use of clearing agency services. Finally, section 17A(e) requires the Commission to use its authority under the Act to end the physical movement of securities certificates in connection with the settlement of securities transactions.

Section 17A also sets forth more general objectives with respect to the regulation of registered clearing agencies. In the introductory provision of that section, Congress directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Congress further charged the Commission to act in accordance with the following specific Congressional findings:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.

Section 17A(a)(2) directs the Commission in using its authority under the Act to have due regard for the public interest; the protection of investors; the safeguarding of securities and funds; and maintenance of fair competition among brokers, dealers clearing agencies, and transfer agents.

#### B. Cost-Based Pricing

The Commission agrees with DTC that depository service fees generally should be based on service costs. The Commission believes that cost-based pricing normally can be expected to

assure that depository service fees are reasonable, equitably allocated and do not discriminate unfairly among depository participants. The Act, however, does not mandate cost-based fees, *per se*, and the equitable allocation of fees is but one of several statutory objectives.<sup>26</sup>

The Commission believes that depository fees may be set at levels above or below cost provided such fees are consistent with the goals of the Act. Indeed, DTC has historically priced many of its services above or below cost to encourage use of the depository and provide incentives for participants to process transactions in ways that promote efficient allocation of depository resources in servicing participants.<sup>27</sup>

#### C. DTC's Proposed Above-Cost and Below-Cost Fees

As indicated above, DTC proposes above-cost deliver order fees to compensate for below-cost fees for certain deposit, withdrawal and interest collection services. DTC also proposes above-cost fees for ID confirm/affirm services to offset certain below-cost ID delivery fees and to pay for DTC educational programs. For the reasons discussed below, the Commission believes that these fees are consistent with the Act.

DTC's proposed fee schedule provides for deliver order fees for corporate securities that are essentially unchanged from its current deliver order fees. Nevertheless, these fees will more than recoup DTC's costs in processing deliver orders. DTC has indicated it believes above-cost deliver order fees are necessary to provide appropriate incentives for depository use by lessening any actual or perceived disincentives that could result from higher deposit, withdrawal, or interest collection services fees. DTC historically has set deposit and withdrawal fees below cost to provide those incentives. Although DTC desires eventually to move service fees closer to service costs, the Commission concurs that it is not inappropriate for DTC to make those fee changes gradually so as to prevent

<sup>26</sup> See, generally, *Bradford National Clearing Corp. v. SEC*, 590 F.2d 1085 (D.C. Cir. 1978).

<sup>27</sup> See, e.g., File No. SR-DTC-84-5, Securities Exchange Act Release No. 21201 (August 3, 1984), 49 FR 32140 (August 10, 1984) (disincentive fee for paper input); File No. SR-DTC-84-2, Securities Exchange Act Release No. 21187 (July 31, 1984), 49 FR 31354 (August 6, 1984) (disincentive fee for hard-copy ID input); File No. SR-DCT-80-5, Securities Exchange Act Release No. 17342 (November 26, 1980), 45 FR 80223 (December 3, 1980) (scaled zone charges designed to encourage deposit early, rather than late, in the day).



sudden and dramatic fee changes and avoid industry reaction that might reverse the trend of increased securities immobilization. The Commission believes that it is appropriate for DTC to recover some of the revenue shortfall through above-cost deliver order fees. Accordingly, the Commission believes that DTC's decision to retain these above-cost and below-cost fees while gradually moving towards cost-based fees is consistent with the Act.

The Commission also finds that DTC's decision to establish certain below-cost ID delivery fees and above-cost ID delivery fees and above-cost ID confirm/affirm fees is consistent with the Act. Although the reduction in ID delivery fees only involves a few pennies per delivery, DTC represented that this reduction may encourage participants to settle their trades in a more timely manner consistent with self-regulatory organization rules.<sup>28</sup> DTC's proposal to offset revenue shortfalls in ID delivery services with above-cost ID confirm/affirm fees does not, in the Commission's view, discriminate among depository users. The Commission understands that the same group of depository users would be affected by the ID delivery fees and ID confirm/affirm fees and, therefore, that those fees would not systematically discriminate against different classes of participants. The incentive for increased ID deliveries and DTC ID educational efforts, which would be paid for from above-cost ID confirm/affirm fees, are particularly appropriate at this time when DTC and the municipal securities industry are working to bring municipal securities transactions into the ID system.

The Commission notes that several of DTC's proposed fees would result in subsidies between different kinds of services. Thus, excess revenues from registered municipal securities deliver order services would be used to subsidize municipal bearer bond interest collections and excess revenues from municipal security ID delivery services would subsidize general ID services. DTC represented, however, that the same classes of DTC participants generally use DTC's registered and bearer municipal securities services and, therefore, any material discrimination among depository users would be very unlikely. Moreover, DTC represented that any subsidy that results from above-cost municipal securities ID delivery fees in favor of ID system users generally is more than offset by the

substantial costs DTC is incurring in bringing municipal securities into the ID system. Accordingly, the Commission believes these fees are reasonable and equitably allocate these service costs among DTC participants.

DTC has also proposed a variety of other fee changes that depart modestly from strict cost recovery. As discussed above, DTC's deposit zone fees, COD fees, WT fees (including fees for PTS inquiries concerning aged transfers) and uniform reject fees were designed to create incentives to improve the efficiency of DTC's processing or participant operations. For example, DTC's proposed deposit and withdrawal (COD and WT) fees are designed to encourage participants to submit certificates or withdrawal instructions overnight or earlier in the day, when DTC can process those requests most efficiently. In addition, the proposed uniform reject fees appear to provide real incentives to participants to submit accurate instructions and could provide DTC an important warning signal of participants experiencing operational stress or difficulties. The Commission finds that these fees are reasonably designed to achieve DTC's objectives and are consistent with the Act.<sup>29</sup>

#### D. Less-Active Issue Surcharges

In its test fee schedule, DTC proposed less-active issue fee surcharges at a level that would have fully recovered the increased costs associated with processing and maintaining positions in less-active issues. Commenters strongly objected to this aspect of the test fee schedule. They did not challenge DTC's cost justifications but rather objected to these fees on policy grounds, contending that they would discourage increased immobilization of securities and result in more transactions being compared and settled outside of established clearing agency systems. In response to these comments, DTC determined to retain less-active issue surcharges in the proposed rule change but at a substantially reduced level. Nevertheless, the two firms commenting on the proposed rule change contended that the reduced surcharge could still act as a disincentive to increased immobilization, particularly with respect to municipal securities.

The Commission believes that DTC has struck an acceptable balance in

establishing less-active issue surcharges at a level that will recover much of the increased costs associated with such issues, while determining not to require that all of those costs be specifically allocated to them at a time when many less-active issues, particularly municipal securities, are just beginning to be immobilized in securities depositories. The Commission agrees with commenters that DTC's proposed less-active issue surcharges will increase participant expenses in processing less-active issues in the National System and thus could be perceived as a disincentive to immobilization of such securities. The Commission, however, is satisfied that the surcharges have been set at levels that should reduce this effect. The Commission agrees with DTC that the cost of physical, ex-depository processing of less-active issues generally should be greater than DTC's proposed fees and that immobilization and depository processing of less-active issues should not be materially affected by the proposal. Indeed, a study conducted by the Public Securities Association ("PSA") indicates that in most instances DTC's deposit, delivery, safekeeping and withdrawal fees for registered form securities are significantly less than ex-depository physical processing costs.<sup>30</sup>

It is clear that less-active issues create higher processing costs than active issues. As discussed above, per-unit costs for deposits and withdrawals decrease significantly as the number of individual deposits or withdrawals DTC can include in a single transfer shipment increases. The Commission believes those cost considerations support DTC's less-active issue surcharges for deposits and withdrawals of registered-form securities. The Commission also believes DTC has justified the proposed

<sup>30</sup> See File No. SR-DTC-85-6, Letter to DTC from PSA. For example, PSA estimates that the following differences exist between DTC fees and ex-depository processing costs for registered-form municipal securities: Delivery/receipt DTC \$1.50 versus ex-depository \$16.50; deposit—DTC \$1.80 versus ex-depository \$16.50; COD withdrawal—DTC \$15.50 versus ex-depository \$16.50; WT—DTC \$1.00 versus ex-depository \$14.25; safekeeping per issue, per month, par value \$10,000—DTC \$.59 versus ex-depository \$2.00. In a variety of services, however, PSA estimates that DTC fees exceed ex-depository processing costs. Those services include certain redemptions, bearer bond interest collection at certain position levels, and some bearer bond safekeeping, deposit and withdrawal fees. The Commission notes that the PSA study was based on DTC's test fee schedule and that DTC's proposed fees, in most instances, are the same as or lower than those in the test schedule. In summarizing its study, the PSA found that the DTC test fee schedule provided cost effective processing, in most instances, for registered securities but excessive costs for bearer bonds.

<sup>28</sup> See, e.g., New York Stock Exchange Rule 387; Municipal Securities Rulemaking Board Rules G-12, G-15.

<sup>29</sup> As discussed in note 7, *supra*, DTC's proposal includes several other service fee changes. The Commission believes that those fees represent cost-based service pricing as determined by DTC based on the cost studies it has conducted. The Commission finds that these fees are reasonable, equitably allocated among DTC participants and, therefore, consistent with the Act.



long position surcharges on less-active issues because of the increased per-unit costs associated with making new issues eligible for deposit including allocating vault space to these issues.<sup>31</sup>

Nevertheless, if less-active issue surcharges were set at a sufficiently high level, market participants that now use centralized, automated clearance and settlement systems for the vast majority of their transactions might have real incentives to revert to physical processing systems.<sup>32</sup> That result would conflict with Congressional goals set forth in section 17A of the Act and threaten progress made to date in the National System. Accordingly, the Commission believes that DTC, the industry and the Commission should monitor the effect of DTC's less-active issue surcharges to ascertain their impact in actual operation on the National System.

#### E. Legal Deposit Fees

Several commenters addressing DTC's test fee schedule questioned whether DTC's proposed legal deposit fees, particularly the proposed volume discounts, accurately reflect DTC's economies in processing legal deposits. In particular, they questioned whether legal deposits are the kind of service that results in economies of scale based on the number of deposits processed for any particular firm, given that each legal deposit must be processed individually. In response, DTC has represented that the proposed volume discounts reflect economies of scale associated with a high fixed-cost service and that the proposed volume discounts are intended to encourage participants to use this service rather than submitting legal transfers directly to transfer agents throughout the country. DTC noted that for some participants with high volumes of legal deposits, DTC's legal deposit fees may be more expensive than the cost those participants incur in submitting the items to transfer agents directly for transfer into their nominee name before depositing those certificates at DTC.

At the 1984 Securities Processing Roundtable, transfer agent and securities industry representatives urged DTC, among others, to reduce their fees

for legal deposits. Transfer agent representatives indicated that the use of depositories as conduits for legal transfers should be encouraged because depository items are pre-screened (to assure that the participant has provided sufficient documentation), packaged in a uniform format and delivered in an organized manner.<sup>33</sup>

The Commission believes the proposed legal deposit volume discounts are reasonable, provide for an equitable allocation of service fees and are reasonably designed to accomplish DTC's objectives consistent with the Act. Because the proposed fees at the highest volume level (including the proposed discount) will exceed DTC's marginal costs in processing these deposits, any additional revenues generated by the discounts will benefit all depository participants by offsetting some of DTC's other fixed costs associated with this service. Moreover, DTC expects that its fees for legal deposit services (including the proposed volume discounts) will continue to generate excess revenues that will be used to offset some of the anticipated revenue shortfall associated with processing other certificate deposits.

#### F. Dividend, Interest and Reorganization Payment Fees

The Commission finds that DTC's proposed dividend, interest and reorganization payment fees are reasonable and equitably allocate the costs of those services among DTC's participants. The Commission also finds DTC's proposal to charge approximately \$3.7 million of its dividend processing costs to the investment income generated by same-day funds collections to be consistent with the Act. DTC noted that those costs are directly related to its efforts to collect cash payments for participants in same-day funds on payable date. (As a result of those efforts, DTC collected in 1984 approximately 89% of all cash payments in same-day funds and 1984 refunds of investment income totalled approximately \$39.9 million.) Because not all participants share *pro-rata* in the monthly rebate of investment income from these payments, the Commission believes that it is appropriate for DTC to charge collection costs against investment income rather than to increase fees for payment credits generally.<sup>34</sup>

<sup>31</sup> See U.S. Securities and Exchange Commission, Report of the Division of Market Regulation 1984 Securities Processing Roundtable, at 37 (May 31, 1984).

<sup>32</sup> DTC's Rules permit DTC to withhold monthly investment rebates from participants who, as paying agents, do not make payments to DTC in

#### G. Underwriting Service Fees

The Commission believes that DTC's proposed underwriting service fees are reasonable and provide for the equitable allocation of DTC's costs in providing underwriting services. As discussed above, DTC has attempted to correlate its underwriting service fees for particular types of securities issues with the costs of processing those underwritings. For example, underwriting service fees for book-entry distributions would be substantially less than the fees for a registered municipal securities issue with multiple CUSIP numbers and a put option feature. Moreover, the proposal would allocate to the managing underwriter, as a surcharge fee, a portion of DTC's extraordinary costs for processing particular types of issues that require special consultation or development costs, such as securities that include a put option feature. Finally, the \$500 ceiling on this surcharge (\$350 for issues with put option features) should avoid the imposition of excessive fees on any particular managing underwriter.

#### IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act.

It is therefore ordered, under section 19(b)(2) of the Act, that the proposed rule change (SR-DTC-85-6) be, and hereby is approved.

By the Commission.

Dated: March 31, 1986.

John Wheeler,

Secretary.

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[Release No. 34-23083; File Nos. SR-DTC-77-3, SR-DTC-77-10, SR-MSTC-77-1, SR-PSDTC-77-1]

#### Self-Regulatory Organizations; the Depository Trust Company, et al., Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change and Extending Time for Action on Proposed Rule Changes

##### I. Summary

The subject proposed self-regulatory organization rule changes concern the manner in which securities depositories recover the costs of providing services related to inter-depository connections, and in particular, the appropriateness of

same-day funds. See SR-DTC-80-6, Securities Exchange Act Release No. 17203 (October 8, 1980), 45 FR 68817 (October 16, 1980).

<sup>31</sup> DTC must provide shelf space in its vault for these issues; monitor issuer calls and redemptions; reconcile positions with participants and transfer agents (if the certificates are in registered form) and provide security and internal controls to prevent loss or theft of those securities.

<sup>32</sup> That incentive would appear to be greatest where the participant knows its customer wants delivery of a physical certificate, because a deposit today will inevitably result in a withdrawal tomorrow.



fees charged to other depositories or their own participants who use such services. The proposed rule changes were filed in 1977, when, as discussed below, depository services and depository interconnections were not yet well-established. Because the proposed rule changes raised issues with significant policy implications for the developing National Clearing and Settlement System (the "National System"), action on the proposals was deferred pending maturation of the depository segment of that system. Comment on the proposed rule changes was solicited in 1983, following approval of marketplace rules that mandated use of securities depository facilities for processing and settling many institutional trades. In response, the Commission received detailed comments from securities depositories, brokerage firms and the Securities Industry Association.

The Commission has determined to withhold approval of the proposed rule changes (File Nos. SR-DTC-77-3, SR-MSTC-77-1, SR-PSDTC-77-1) that would establish a no-charge policy for certain linked and interfaced services, pending a decision whether participant-identified surcharges for interfaced services are consistent with the Securities Exchange Act of 1934 ("the Act"). The Commission is deferring final action on those proposed rule changes because of the potential inter-relationship between fees charged among depositories and fees charged to depository participants for services involving participants at other depositories. Accordingly, the Commission invites comment on the costs and benefits of all aspects of fees for services through depository interconnections.

As discussed in greater detail below, the Commission is instituting proceedings to determine whether to approve or disapprove The Depository Trust Company's ("DTC's") proposed participant-identified surcharges for third-party and dual-participant book-entry movements through DTC's interface accounts maintained at DTC on behalf of the other securities depositories (File No. SR-DTC-77-10). The Commission has not reached a preliminary view with respect to DTC's proposed surcharges. Nevertheless, this release identifies reasons why surcharges may be appropriate as well as the grounds for possible disapproval of those fees.

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- A. File Nos. SR-DTC-77-3, SR-DTC-77-10 (Part), SR-MSTC-77-1 and SR-PSDTC-77-1
- B. File No. SR-DTC-77-10 concerning surcharges to participants for interfaced services (third-party and dual-participant book-entry movements).

### II. Background

#### A. Depositories' Proposed Rules Changes

Several registered securities depositories have filed proposed rule changes with the Commission concerning (1) agreements among depositories not to charge each other for interfaced services, (2) depository charges to participants that use interface accounts, and (3) depository charges to clearing corporations.<sup>1</sup> Under Section

<sup>1</sup> File No. SR-DTC-77-3, notice of which was given in Securities Exchange Act Release No. 13375 (March 15, 1977), 42 FR 15996 (March 24, 1977); File No. SR-MSTC-77-1, Securities Exchange Act Release No. 13337 (March 7, 1977), 42 FR 15159 (March 18, 1977); File No. SR-PSDTC 77-1, Securities Exchange Release No. 13392 (March 18, 1977), 42 FR 16690 (March 29, 1977); and File No. SR-DTC-77-10, Securities Exchange Act Release No. 14109 (October 27, 1977), 42 FR 58991 (November 14, 1977).

File Nos. SR-DTC-77-3, SR-MSTC-77-1, and SR-PSDTC 77-1 are substantially identical rule changes establishing agreements not to charge another depository for certain services (deliveries, custody and usage) if it: (i) is registered with the Commission, (ii) is a trust company registered under state law, (iii) is a not-for-profit corporation, and (iv) holds securities in custody for DTC, MSTC or PSDTC. Under the proposals, the depositories would continue to charge each other for physical withdrawals.

File No. SR-DTC-77-10 would authorize DTC to impose a surcharge on its participants that deliver or receive securities through the interface accounts. That filing also would authorize DTC to charge NSCC a \$0.40 fee for securities movements between NSCC and other clearing agencies. The Commission is approving DTC's proposed fee to NSCC. See Securities Exchange Act Release No. 23082 (March 31, 1986).

19(b)(2) of the Act, the Commission must approve these rule changes if it finds they are consistent with the requirements of the Act and Commission rules applicable to registered clearing agencies.<sup>2</sup> The Commission may not approve the proposals if it is unable to make such a finding. Rather, Section 19(b)(2)(B) of the Act provides that the Commission institute proceedings to determine whether proposed rule changes should be approved or disapproved. The statute requires that the notice of the proceedings set forth the grounds for disapproval under consideration. At the conclusion of that proceeding, the Commission may then either approve or disapprove the proposals.

On December 7, 1983, the Commission solicited comment on these proposed rule changes.<sup>3</sup> In the Release for Comment, the Commission solicited views and data concerning the proposals, the nature of interconnections among registered securities depositories and between depositories and clearing corporations, and the appropriate regulatory approach to depository fees for the use of interconnected services. The Commission received eight comment letters.<sup>4</sup> Specific comments and the Commission's conclusions with respect to the proposals are discussed below.

The Release for Comment noted that the National System has changed significantly since the proposed rule changes were originally filed. The Release for Comment also noted that fees respecting interfaced services must be evaluated in light of previously established National System policies developed in connection with clearing corporation interfaces. The Release for Comment identified previous instances where the Commission has found "free" interfaces essential to promote statutory goals in connection with clearing corporation services and invited commenters to address the relationship between those precedents and the proposed rule changes.

<sup>2</sup> The principal provisions of the Act respecting clearing agencies are found in section 17A(b)(3) of the Act, 15 U.S.C. 78q-1(b)(3).

<sup>3</sup> See Securities Exchange Act Release No. 20461 (December 7, 1983), 48 FR 55654 (December 14, 1983) (the "Release for Comment").

<sup>4</sup> Comments were received from the Securities Industry Association ("SIA") Operations Committee; SIA Securities Operations Division; Merrill Lynch Pierce Fenner & Smith, Inc.; Depository Trust Company ("DTC"); Midwest Securities Trust Company ("MSTC"); Pacific Securities Depository Trust Company ("PSDTC"); and Philadelphia Depository Trust Company ("Philadep").



### B. Nature of Depository Services and Depository Interconnections

Depositories perform four basic services for their participants. Depositories accept deposits of securities for custody, make computerized book-entry deliveries of securities immobilized in their custody, make computerized book-entry pledges of securities in their custody and provide for the withdrawal of securities. Depositories also perform services ancillary to their safekeeping function. For example, depositories facilitate the exercise of voting rights and the collection of interest and dividend payments on securities in their custody. Other depository services include dividend reinvestment, reorganization and tender offer processing, and securities lending and pledge programs.

The Release for Comment described two types of automated interconnections among depositories: interfaces and links. Understanding the difference between interfaced (bilateral) and linked (one-way) service arrangements is critical to the discussion that follows concerning the appropriate fee structures for those services. In simplest terms, depositories interface with each other by performing reciprocal services and maintaining reciprocal accounts in each other's systems. Through debits and credits to the reciprocal accounts, as well as direct communications between interfaced depositories, book-entry deliveries between participants in different depositories are possible. Depository interface deliveries at issue here involve two types of securities movements: "dual-participant" and "third-party" movements. Dual-participant deliveries occur when a firm that is a participant in two depositories makes a book-entry movement from its account at one depository to its account at the other.<sup>5</sup> Third-party movements occur when a participant of one depository makes a book-entry movement to a participant of a different depository.<sup>6</sup>

Depositories also are linked with each other for some purposes. In these arrangements, one depository performs a service for another depository that in turn offers the service to its participants.

For example, as discussed below, DTC provides centralized facilities for processing confirmations and affirmations of most institutional trades in the National Institutional Delivery System ("NIDS"). Those services, while performed by DTC, are then passed-through by other depositories to their participants.

### C. Current Status

The Commission understands that DTC, MSTC and PSDTC are honoring informal no-charge agreements, which extend to transaction services as well as most custody and usage services.<sup>7</sup> All of the depositories, however, surcharge their participants for some or all book-entry securities movements through the interface.<sup>8</sup>

### III. Discussion

The Act requires depositories, in recovering their service costs, to establish reasonable fees and to allocate those fees equitably among users. Provided it is consistent with other statutory goals, the Act reflects a preference that fees be cost-based, so that only participants who use and directly benefit from a service pay for the service. It could be argued, however, that in the context of services provided by one depository to another depository (or participants in the other depository), the imposition of depository-to-depository or participant-identified charges may undermine National System goals and other objectives of the Act, including one-account settlement, competition between depositories and competition among broker-dealers.

To assess these issues as they relate to the subject proposed rule changes, the material below has attempted to distinguish services and charges in two different ways. First, a distinction is drawn between those services that are essentially reciprocal ("interfaced services") and those in which one depository performs unreciprocated services for another ("linked services"). Second, in evaluating possible fee structures for interfaced and linked services, consideration is given to both

depository-to-depository charges and participant-identified surcharges.

Part A of this section reviews the legal standards and previous Commission orders germane to the rule filings. Parts B and C develop the characteristics, and provide examples, of interfaced services and linked services. In response to questions and suggestions from commenters, special attention is devoted to the classification of custody services as a linked service.

Part D discusses depository charges to depository participants and other depositories for linked services as well as the filed agreement among depositories not to charge each other for certain services. Finally, Part E discusses depository fees to other depositories for interdepository book-entry movements, and invites comment on all aspects of fees for interfaced services. Part E also discusses depository fees to participants in connection with interfaced services and identifies the benefits and disadvantages of participant-identified surcharges versus participant-mutualized fees for third-party and dual-participant interdepository book-entry movements.

### A. Legal Standards and Previous Commission Orders

In Section 17A of the Act, Congress directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. Congress further charged the Commission to act in accordance with the following specific Congressional findings:

(A) The prompt and accurate clearance and settlement of securities transactions, including the transfer of record ownership and the safeguarding of securities and funds related thereto, are necessary for the protection of investors and persons facilitating transactions by and acting on behalf of investors.

(B) Inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.

(C) New data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement.

(D) The linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors.<sup>9</sup>

<sup>5</sup> This type of interface delivery is actually only an inventory transfer and may be motivated by, among other things, a need to meet settlement obligations at the receiving depository. See *infra* at note 44.

<sup>6</sup> Third-party movements may result from, among other things, transactions settling among brokers, banks and institutions in the National Institutional Delivery System, other delivery vs. payment transactions, and stock lending activities entered into outside of the depository by participants in different depositories.

<sup>7</sup> The no-charge agreement extends to custody services for registered-form securities. A national interface system for bearer-form securities has only recently been developed and is still being enhanced. See discussion at note 25, *infra*.

<sup>8</sup> Light of the Commission's decision to institute disapproval proceedings with respect to DTC's surcharges on third-party and dual-participant movements, the Commission invites comment on existing interfaced service surcharges at other depositories. In the event the DTC surcharges are rescinded or disapproved, the Commission would expect the other depositories to consider taking similar steps.

<sup>9</sup> 15 U.S.C. 78q-1(a)(1).



Section 17A(a)(2) directs the Commission in using its authority under the Act to have due regard for the public interest; the protection of investors; the safeguarding of securities and funds; and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents. Section 17A(b)(3) provides, among other things, that a clearing agency shall not be registered by the Commission unless the Commission determines that the rules of the clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants and are designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and to remove impediments to and perfect the mechanism of a national system. Section 17A(b)(3)(I) provides that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, Section 17A(e) requires the Commission to use its authority under the Act to end the physical movement of securities certificates in connection with the settlement of securities transactions.

In administering Section 17A of the Act, the Commission has underscored the importance of automated interconnections among National System entities.<sup>10</sup> As developed in the Release for Comment, an effective interconnected National System enables National System participants to access, at reasonable cost, one entity for efficient and safe clearance and settlement of all securities transactions, regardless of the location of the other parties to the transactions or the markets in which the transactions occur ("one account settlement"). In such a system, brokers and dealers can choose the marketplace of execution, and then process resulting transactions through the settlement facilities of their choice. In addition, depository participants in an effective interconnected National System must be able to deposit and maintain securities in a custodial account at the depository of their choice and effect book-entry movements to settle clearing obligations, or to pledge securities and perform other functions by book-entry. Indeed, absent efficient book-entry and custodial interconnections, National System

participants would not be able to effect same-day turnaround safely and economically. In today's securities markets, however, book-entry delivery capability through depository interfaces is essential, and federal regulatory policy must ensure that such capability is promoted by self-regulatory and industry action.<sup>11</sup>

In Section 11A of the Act, Congress directed the Commission to facilitate the establishment of a national market system. Section 11A requires, among other things, that the Commission act to assure fair competition among broker-dealers, among exchange markets, and between exchange markets and markets other than exchange markets; and assure the practicability of brokers executing investors' orders in the best market. Congress found that linking all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase available information, facilitate the offsetting of investor orders, and contribute to best execution of such orders.<sup>12</sup>

#### *B. What Is an Interfaced Service*

The Release for Comment described an "interface" as a connection between entities in which each entity provides the same service and independently performs all work essential to that service. Commenters generally supported this description. DTC, for example, indicated that, through an interface, connected depositories reciprocate in providing essentially the same type of service to each other and their participants. Similarly, the SIA agreed with the Commission's basic definition. Despite the general consensus, most commenters believed that distinguishing between an interfaced service and a linked service involves considerable judgment, and the SIA urged the Commission to also distinguish between depository transaction processing services and services ancillary to transaction processing.

Based on the comments received, the Commission recognizes that any general definitions of interfaced services would require the industry and the Commission to evaluate complex factual issues when applying those definitions to future depository interconnections. Nonetheless, for the reasons developed below, we believe that third-party movements and dual-participant

movements are interfaced services, while, for example, NIDS services and certificate custody illustrate unreciprocated linked services. In the case of both third-party and dual-participant interdepository book-entry movements, the connected depositories provide book-entry delivery services to their participants. The connected depositories perform the same type and amount of work in establishing reciprocal inventory and control accounts<sup>13</sup> and in receiving or delivering book-entry securities and funds movements pursuant to their participants' instructions.<sup>14</sup>

#### *C. What Is a Linked Service*

##### *1. Generally*

The Release for Comment described a "link" as an automated connection that enables one depository (the "using depository") to use the facilities of another depository (the "servicing depository") to make a particular service available to the using depository's participants. The servicing depository performs the core tasks necessary to deliver the linked service to the using depository's participants. Unlike interfaced services, linked services either are not provided directly by the using depository to its participants or do not involve reciprocal core tasks at the using depository.

<sup>13</sup> For each interface, two accounts are set up within each depository. For example, Depository A will set up an "inventory account," representing Depository B's position at Depository A. Depository A will also set up a "control account," representing Depository A's record of its position at Depository B. Similarly, Depository B will also set up two accounts, one representing Depository A's position at Depository B and the other representing the record of its own position at Depository A. When a dual-participant delivery, for example, is subsequently effected through the interface, the delivering depository debits its participant's account and credits the receiving depository's inventory account. The receiving depository credits its participant's account and debits its control account.

<sup>14</sup> Reconciliation procedures for book-entry movements and money settlement are generally the same for all depositories. For example, DTC receives daily transmission tapes from each interfacing depository indicating the number of shares in DTC's inventory account at the other depository and the number of shares in the control account of the other depository at DTC. DTC generates an audit list daily comparing these accounts with corresponding accounts at DTC and identifying any discrepancies. Once any discrepancies are resolved, the accounts are netted by book-entry. If a long position in favor of one depository exists, that depository may request physical withdrawal and shipment of securities to reduce its long position. Money settlement among the depositories occurs daily. The Commission believes that these tasks are essential to offering interfaced book-entry services and are not separate billable items.

<sup>10</sup> See Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3916 (January 21, 1977) (the "NSCC Registration Order") and Securities Exchange Act Release No. 17343 (November 26, 1980), 45 FR 80224 (December 3, 1980) (the "BSPS Municipal Order"). See also Release for comment at notes 18-24; Securities Exchange Act Release No. 12954.

<sup>11</sup> The Commission orders concerning clearing corporation interconnections were discussed at length in the Release for Comment. See Release No. 20461 at notes 18-25.

<sup>12</sup> See Section 11A(a)(1) of the Act.



The Release for Comment cited as an example of a linked service the processing of confirmations and affirmations by DTC in the National Institutional Delivery System ("NIDS").<sup>15</sup> Commenters generally agreed with that assessment.<sup>16</sup> As the central processor of NIDS confirmations and affirmations, DTC acts as the servicing depository by performing the unreciprocated core processing of NIDS confirms and affirms on all institutional trades among participants in all the linked depositories. Although DTC's NIDS services for confirms and affirms involve automated connections among all depositories, the using depositories essentially act as conduits, relying on DTC's centralized NIDS processing system to make processed confirm and affirm services available to their participants.<sup>17</sup>

DTC's "fourth-party interface" service to Philadep, MSTC, and PSDTC is another example of a linked service. Because Philadep is directly connected only to DTC, an account movement between a participant at Philadep and a participant at either MSTC or PSDTC is effected indirectly through those depositories' respective accounts at DTC and is termed a "fourth-party interface movement." DTC performs the core tasks necessary to enable book-entry movements of securities and funds between Philadep and MSTC or PSDTC. The fourth-party interface service is not

offered to DTC participants; instead the service is provided only to the using depositories—Philadep, MSTC, and PSDTC—for the benefit of their participants.<sup>18</sup>

## 2. Certificate Custody: a Linked Service

A primary service that depositories offer participants is custody of securities certificates. As a result of inter-depository book-entry movements, one depository may maintain securities positions for its participants at a second depository and use the second depository to safekeep the related certificates. Certificate custody services are illustrative of the difficulty of applying the interface versus link distinction to specific depository activities.

Commenters generally viewed custody services as linked services. Nevertheless, commenters questioned whether custody should be analyzed on a securities issue-by-issue basis, or in the aggregate. When viewed in the aggregate, each connected depository may be called upon to safekeep securities for the other from time to time or of various issues. Assuming the amount of custody servicing each performs for the other roughly balances out, custody services in the aggregate appear to be reciprocated, and thus appear in the nature of an interfaced service.

While the Commission believes this is a close question, on balance the Commission has concluded that custodial services are more properly viewed as a linked service. Custody services, on an issue-by-issue basis, are not reciprocated; only one depository can net to a long position in any given issue. Thus, only the servicing depository performs the core tasks involved in delivering the custody service for that issue.<sup>19</sup> Custody services should be distinguished from interdepository book-entry delivery services (the dual and third party interfaced services described above). In

effecting book-entry delivery services, each depository performs similar account-entry functions. Once a delivery is made on the servicing depository's accounts, however, only the servicing depository performs the dividend collection, coupon clipping, inventory control or other services associated with certificate custody; the using depository provides no reciprocal services.<sup>20</sup>

Moreover, an "aggregate" analysis ignores each depository's ability to control the size of its securities position held at another depository. Indeed, a using depository may make a conscious decision to leave certificates at another depository (e.g., because it is less expensive than safekeeping the certificates itself), creating overall a net imbalance between the amount of securities on deposit in the two depositories.

## D. Charges for Linked Services

The Commission preliminarily believes that a servicing depository should be able to charge a using depository an appropriate fee for a linked service. That principle operates today in practice in connection with some linked services.<sup>21</sup> In linked service arrangements, using depositories are serviced like any other participant. The Commission further believes that, under ordinary circumstances, a servicing depository should be permitted to charge a using depository the same fee it charges its own participants for the same or a similar service.<sup>22</sup> For

<sup>15</sup> In a typical institutional trade, an investment manager instructs a broker to execute a trade. After executing the trade, the broker sends to the investment manager a written statement, called a "confirmation," specifying the terms of that trade. If the confirmation matches the investment manager's instructions, the investment manager will issue an "affirmation" to the custodian bank authorizing the bank to receive or deliver securities against payment to or by the executing broker. Each depository participating in NIDS collects from its broker participants trade data and transmits that data to DTC. DTC then generates confirmations for depository participants and transmits those confirmations to the participating depositories for distribution to interested participants. Each depository also collects affirmations from institutions and transmits that data to DTC. DTC then generates data reflecting trades to be settled by the interested parties at the depository of their choice and transmits those reports to the linked depositories for distribution to their participants. Under this linked service, DTC, rather than the other depositories, consolidates in a centralized fashion the essential information about all participating institutional trades and generates trade confirmation and settlement reports.

<sup>16</sup> See comment letters from DTC, MSTC, Philadep and PSDTC.

<sup>17</sup> In its comment letter, PSDTC points out that it requires DTC services in connection with NIDS only where the institutional trade involves one or more parties that are not PSDTC participants. Thus, PSDTC's NIDS link with DTC encompasses a narrower set of transactions than MSTC's or Philadep's, which use DTC services in connection with all institutional trades.

<sup>18</sup> The Commission believes that the tasks Philadep, MSTC and PSDTC perform in fourth-party interface movements constitute interfaced services because they essentially enable inter-depository book-entry movements among their participants. In other words, while Philadep, MSTC and PSDTC perform reciprocal services for each other in processing fourth-party interface movements, none performs a reciprocal service with DTC; DTC alone performs a linked service by providing the central automated interconnection between the unconnected depositories.

<sup>19</sup> Each interfaced depository independently maintains and services the aggregate long interface positions of the other depository. Thus, depository A provides custody services to depository B for depository B's inventory account at depository A. Depository B, in turn, provides custody services for depository A's inventory account at depository B.

<sup>20</sup> Subcustodian arrangements between the using and servicing depositories require that control over certificates rest with the using depository. See U.C.C. 8-320. From the perspective of a using depository's participants, therefore, certificates held at the servicing depository are part of the fungible bulk maintained by the using depository. Except in rare circumstances, participants do not know whether certificates underlying their book-entry positions are held in vaults maintained by their own depository or are held in a servicing depository's vault.

<sup>21</sup> For example, DTC currently charges MSTC, PSDTC and Philadep for processing NIDS confirmations and affirmations. See, e.g., File No. SR-DTC-83-6, Securities Exchange Act Release No. 20078 (Aug. 12, 1983), 48 FR 37756 (Aug. 19, 1983). The other depositories have established NIDS service fees that, in effect, pass through to their participants DTC's NIDS fees. See, e.g., File No. SR-MSTC-84-6, Securities Exchange Act Release No. 21267 (August 23, 1984), 49 FR 34994 (September 4, 1984).

<sup>22</sup> Depository participants' input in pricing policies through comments and user governance provide an important check on depository fees. In addition, depository participants and other interested persons, including using depositories, can comment on proposed depository fees when those proposals are filed with the Commission under section 19(b) of the Act. Using depositories, however, have no direct voice in governance of the servicing depository. Thus, the Commission believes

Continued



example, if a servicing depository provides volume discounts to its participants, the Commission expects the discounts would apply to reduce a using depository's monthly charges.

At the same time, DTC, MSTC and PSDTC have filed no-charge agreements respecting certain services, including linked services.<sup>23</sup> The agreements limit no-charge status to securities depositories that: are registered clearing agencies under Section 19 of the Act; hold securities in custody for participants; are organized under state law as trust companies; do not seek to profit from services to participants (the "Not-For-Profit Condition"); and interface with other registered securities depositories. Commenters generally supported the proposed no-charge agreements and urged the Commission to approve the agreements as filed.<sup>24</sup>

Arguments can be made that, even though custody is a linked service, unrecompensed subcustody arrangements among depositories may be appropriate for registered-form securities. As several depositories noted in their filings and comment letters, work associated with custody services for registered-form instruments largely balances out among depositories over time. Even if custody imbalances develop, custody expenses can be reduced by consolidating certificates into jumbo certificates. In addition, dividend or interest payments can be consolidated into one payment to the using depository. Thus, for registered securities, the difference in work and expense occasioned by a custody imbalance may not be significant.<sup>25</sup> The

that generally equating using depository fees for linked services to the servicing depository's charges to its own participants should help assure the reasonableness of those fees.

If circumstances indicate that participant fees for similar services are inappropriate as a gauge for particular depository linkage fees, the Commission could consider alternative bases for such fees on a case-by-case basis. Of course, such fees should be filed under section 19(b)(2) of the Act to permit comments from using depositories before those fees become effective.

<sup>23</sup> Those agreements would not preclude "special and minor fees," and do not apply to apply to certificate withdrawal services. See e.g., File No. SR-DTC-77-3 at 4.

<sup>24</sup> PSDTC expressed concern that the Not-For-Profit-Condition not be read restrictively. According to PSDTC, a literal reading of this condition could make PSDTC ineligible for "no-charge" status, because PSDTC is organized as a for-profit corporation. Although organized under state corporate laws in such a form as to permit PSDTC to operate as a for-profit corporation, PSDTC's sole shareholder, the PSE, is a not-for-profit membership corporation. The Commission understands that neither DTC nor MSTC reads the Not-For-Profit Condition to preclude PSDTC's qualification for no-charge status under the proposed agreements.

<sup>25</sup> The no-charge agreements do not explicitly contemplate custody of bearer-form securities. DTC,

agreement reached by all of the depositories to forego charges appears to confirm this conclusion. In light of the decision to seek further comment on depository charges to participants for interfaced services, however, the Commission invites further comment on the appropriateness of proposed no-charge agreements between depositories for custody services.

#### E. Charges for Interfaced Services

##### 1. Depository-to-Depository Charges for Interfaced Services

The Exchange Act contemplates that depositories will allocate service fees equitably among service users. Accordingly, the cost of providing interfaced services presumably should be recoverable from all users of those services, including interconnected depositories. Nevertheless, as outlined above, equitable allocation of service fees is but one of several statutory objectives. Thus, the Commission must determine, as it has in the clearing corporation context, whether, on balance, depository-to-depository charges for interfaced services are consistent with National System goals.<sup>26</sup>

All commenters, other than the Depository Trust Company, urged the Commission to adopt a "no-charge" principle for interfaced depository services. The SIA, for example, indicated that free interfaces among depositories best support the goals of the National System. The SIA stated its belief that free interfaces preclude predatory pricing, enable depositories to compete fairly in areas where they should compete, and eliminate disputes over who should pay for depository improvements affecting the interfaces. Ultimately, the SIA stated, all depository participants benefit from

MSTC and PSDTC did not offer bearer certificate custody services, particularly for municipal securities, until late 1981, several years after the no-charge agreements were filed. Nevertheless, the Commission understands that these depositories have not sought to charge each other for bearer certificate custody services. The operational characteristics of bearer instruments suggest that bearer custody services should be treated as linked services for which interdepository charges may be justified. In servicing bearer instruments, certificates customarily must be physically handled, the coupons clipped and delivered to paying agents, and vault space and insurance coverage maintained. Bearer certificates cannot be consolidated into jumbo certificates unless the issue is interchangeable in form. (The Commission understands that only 40% to 50% of bearer securities issues currently are interchangeable from bearer to registered form.) Thus, if linked depositories maintain an unequal number of bearers for each other, one depository may experience substantially greater costs than the other.

<sup>26</sup> See *Bradford National Clearing Corporation v. SEC*, 590 F.2d 1065 (D.C. Cir. 1978).

efficient interfaces and, accordingly, all should share in the associated costs. For similar reasons, MSTC, SCCC, Philadep, PCC and PSDTC believed that depositories should not charge each other fees for interfaced service.

DTC argued that one reason behind a ban on interface charges is that the nature and amount of effort required of each connected depository in processing one or more types of interface account transactions should be similar, so that their costs should be similar, and any fees they charge each other to recover those costs would be roughly offsetting. DTC asserted, however, that an interface fee prohibition would require the Commission to make a number of regulatory judgments, such as what constitutes "interfaced" as opposed to "linked" services. For example, DTC asserted that if certificate custody services were covered by an interface fee prohibition, a bank or other securities custodian could register as a clearing agency (this qualifying for "no-charge" status) and sell custody services to other users without paying the depository for its custody work.<sup>27</sup> Thus, DTC asserted, "depositories should charge each other the same activity fee which they charge all other participants."

As noted above, the Commission has not made a determination that depository-to-depository charges for interfaced services are consistent with the Act. Instead, the Commission has commenced proceedings to determine whether to approve or disapprove DTC's proposed surcharge fees to its participants for interfaced services. Accordingly, the Commission invites further comment on the appropriate treatment under the Act of depository-to-depository charges for interfaced services.

The Commission specifically invites commenters to address whether a prohibition against depository-to-depository charges limited to "interfaced" services is required to further the purposes of the Act. For example, it is possible that charges among interconnected depositories for interfaced services may undermine the objective of efficient one-account

<sup>27</sup> It appears unlikely, however, that any custodian bank or broker-dealer would apply for registration as a clearing agency solely to take advantage of an interface fee prohibition. Clearing agency registration would require an applicant to become a self-regulatory organization, with the full panoply of customer monitoring systems, written service rules and procedures, and special due process protections mandated by section 17A of the Act. It also would require exposure of business decisions and service prices to public comment and federal agency review.



settlement of securities transactions and thereby burden competition among depositories and among their participants.

In this regard, it is likely that if depositories were able to charge each other for interfaced services, at least some depositories might elect to absorb those costs by passing them on to the participant that effected the transaction that resulted in the fee assessment. This would increase the costs to participants for transactions with participants of other depositories. At the same time, depository fees for book-entry movements are extremely modest compared to the overall costs of effecting securities transactions. If depository participants regard such fees as relatively insignificant compared to the opportunities for superior executions with marketmaker participants of other depositories as well as other transaction costs, the adverse competitive effect of interdepository charges may be minimal.<sup>28</sup> Commenters are urged to assess the effects of allowing depositories to charge each other for interdepository book-entry movements. In particular, they should consider whether these added costs might be sufficient to discourage firms from effecting transactions with firms that are participants in other depositories, and whether this might have the effect of discouraging firms from joining or maintaining membership in more than one depository. In this regard, commenters should discuss whether the costs associated with any such deterrence of broker-dealer competition exceed the benefits of assessing costs to depository participants using an interfaced service rather than mutualizing those costs among all depository participants.

Charges among depositories for interfaced services could cause one-account settlement depository service users to pay higher per unit settlement costs than participants that don't use interfaces. This would appear to be true whether interfaced service costs are mutualized among depository participants or are passed through on a user-identified basis. Different depositories have differing per-unit service costs. Therefore, if depositories

charge each other to recover interface account activity costs, participants in a more efficient (and less expensive) depository would pay more on a per-unit basis than the depository's per-unit costs would dictate, which could discourage settlement activity involving interface accounts.

## 2. Charges to Participants for Interfaced Services

A depository will need to recover from its participants the costs of interfaced services in either of two circumstances: (i) revenues from fees to other depositories do not offset all of a depository's interfaced service costs; or (ii) the depository does not charge other depositories for interfaced services. As a general matter, depositories could either spread those costs across all or some portion of their participant base through mutualized fees for the interconnected services, or they could surcharge those participants whose activity directly results in use of the interconnection. Both cost recovery techniques have potential economic consequences and implications for policy objectives the Commission is directed under the Act to foster. The following discussion outlines some of the positive and negative externalities and policy implications; commenters are invited to address these or other potential effects of both cost-recovery techniques.

Depository surcharges to participants for interfaced services are the subject of one rule filing under consideration today.<sup>29</sup> All of the commenters responding to the Release for Comment addressed this rule filing.

Commenters generally urged the Commission to prohibit participant-identified surcharges for interfaced services.<sup>30</sup> Most commenters asserted that depository interface cost recovery should be mutualized. For example, the SIA argued for mutualization because interface service costs are essentially fixed expenses that benefit all National System participants by encouraging

competition and permitting marketplace selection on the basis of execution price and service, not settlement charges. The SIA also asserted that any participant-identified surcharges tend to impair competition, minimize freedom of choice and reduce the economies of a viable one-account settlement system. MSTC, Philadep, and PSDTC similarly argued that participant-identified surcharges could discourage interface use and impair competition among depositories and among participants of different depositories.

In contrast, DTC urged the Commission to allow each depository to recover its interface service costs as it sees fit. DTC contended that participant-identified surcharges equitably allocate costs associated with book-entry interfaces by surcharging the participants that use the interface. DTC also believed that mutualizing service costs among all participants represents an inappropriate subsidy to interface users from participants who seldom or never deliver to or receive from interface accounts.<sup>31</sup> Moreover, only surcharges produce cost-based pricing, DTC continues, and only cost-based pricing can ensure that those who use the interface and thereby create interface expenses pay fully-allocated costs for that special service.<sup>32</sup>

<sup>31</sup> DTC cited statistics about interface use at DTC during January 1984, indicating that of 472 participants, 20 participants accounted for 55% of all third-party deliveries, 93 participants made 90% of such deliveries, and 135 participants accounted for the remaining 10% of such deliveries. Thus, while 248 participants used the interface that month to effect third-party deliveries, 224 did not.

<sup>32</sup> The record of depository service fees, however, including DTC's fees, suggests that the correlation between participant activity and depository fees is imprecise and often involves both implicit and explicit subsidies among users. The original fee schedule of DTC's predecessor organization was admittedly not cost-based but was designed to encourage depository use through lower-than-cost deposit and withdrawal fees. (See testimony of William T. Dentzer, Jr., Chairman of DTC, Hearings into the Establishment of a National Clearance and Settlement System (March 6-10, 1978) at 772-74 and 784-85.) In 1980, DTC moved its fees for most major services much closer to per-unit costs. That effort did not produce a full correlation of fees with costs, however, because DTC wanted to avoid "unduly discourag[ing] use of the depository system for book-entry settlement and immobilization of securities." (See File No. SR-DTC-80-5, Exhibit 2, at 2, approved in Securities Exchange Act Release No. 17342, (Nov. 26, 1980), 45 FR 80223 (Dec. 3, 1980).) Moreover, from time to time DTC has imposed differential, scaled fees designed to encourage participants to automate their input instructions and promote efficient allocation of depository resources in handling volume. (See e.g., File No. SR-DTC-84-5, Securities Exchange Act Release No. 21201 (Aug. 3, 1984), 49 FR 32140 (Aug. 10, 1984) (disincentive fee for paper input); File No. SR-DTC-84-2, Securities Exchange Act Release No. 21187 (July 31, 1984), 49 FR 31354 (Aug. 6, 1984) (disincentive fee for hard-

<sup>28</sup> The potential adverse consequences of interdepository surcharges, if any exist, would appear to be easiest to detect in connection with municipal securities transactions. Municipal securities transactions generally settle on a trade-by-trade basis, whereas corporate securities transactions are routinely processed through clearing corporation CNS or balance order accounting systems that significantly reduce the number of securities deliveries each broker-dealer must complete.

<sup>29</sup> See File No. SR-DTC-77-10.

<sup>30</sup> Participant-identified interface fees essentially involve a per-movement surcharge reflecting incremental interface costs incurred by a depository. For example, suppose a book-entry delivery from one participant's account to another costs \$.80. Ordinarily, the depository, by collecting \$.40 from each party to a book-entry delivery or receipt, can recover the full cost of the movement. When a delivery to an interface account is involved, the depository cannot recover \$.40 for the receive from the interfaced depository because of the no-charge agreements. Thus, absent a \$.40 surcharge on the delivering participant, the delivering depository must collect the remaining \$.40 by allocating that cost to other depository services or by increasing the book-entry delivery fee generally through price mutualization.



Moreover, DTC believed that participant-identified surcharges for interface services, if a burden on competition, are not "inappropriate." According to DTC, the proposed surcharge is a tiny fraction of the cost of physical certificate deliveries. Finally, DTC argued that any potential burdens on competition should be viewed as a part of the industry's cost of converting from physical to automated securities deliveries.

DTC estimated that the annual incremental cost of processing dual-participant and third-party movements is \$1 million, which it proposes to recover through a \$1 surcharge on each dual-participant movement (delivery or receipt) and a \$.70 surcharge for each third-party movement (delivery or receipt). If, instead, these costs were mutualized among all users of book-entry movement services, it appears that a \$.01 mutualized increase in DTC's current charges for each book-entry movement would generate sufficient revenues to recover DTC's stated annual incremental costs.<sup>33</sup>

The key issue under Sections 17A and 19(b) of the Act is whether a proposed fee structure is consistent with the goals and purposes of the Act.<sup>34</sup> At this time, the Commission has not concluded that DTC's proposed surcharges are consistent with the Act. Thus, the Commission is instituting proceedings to determine whether to approve or disapprove DTC's proposed surcharge fees. Although the Commission has not reached a determination on the appropriateness of the proposed fees, the grounds for disapproving these fees are outlined below along with the reasons why participant-identified surcharges may be appropriate. The Commission invites comment on the extent to which participant-identified

surcharges and participant-mutualized fees promote or hinder National System objectives, including: providing an equitable allocation of fees and charges, facilitating same-day turnaround, reducing physical deliveries, contributing to centralized netted money settlement for all depository users, fostering competition among depositories and exchange and over-the-counter markets, and rationalizing trading decisions and depository use choices.

#### a. Third-Party Book-Entry Movements

The Commission has repeatedly stressed the importance of one-account settlement ("OAS") capability in the National System.<sup>35</sup> OAS enables a market participant to compare, account for and settle through one entity all trades in the National System, regardless of the location of other parties or the markets of execution.<sup>36</sup> OAS also eliminates barriers to firms' trading in regional exchange markets because of increase trade settlement expenses with those trades. Because clearing corporations and depositories play independent roles in the National System, OAS capability enables a firm to choose to participate in both one clearing corporation and one depository. The Commission invites comment whether an effective OAS opportunity requires that depository participants (either the one-account participants or those with whom they trade) pay no more for processing transactions through an interface account than for intradepository transactions.

The Commission invites commenters to address whether participant-identified surcharges on depository interface movements could impeded OAS. To the extent that surcharges create an economic disincentive to interface use, they may frustrate the development of a National System of interconnected trading markets and clearance and settlement facilities. For example, participant-identified surcharges could require firms in

separate regional markets, participating in different depositories, to pay twice as much in depository book-entry fees to settle a trade as would be required of two firms in the same market center and depository. On the other hand, it is possible that such surcharges would be viewed by market participants as being relatively insignificant and that they would have little if any material impact on decisions to trade with firms that were participants in other markets or depositories. The Commission invites commenters, particularly OTC market makers and municipal securities dealers who would be directly affected by such fees, to address whether such an increase in intermarket and inter-regional settlement costs would cause, or would create incentives that would cause, market makers and dealers to weigh, at the point of execution, settlement costs against execution price or service quality. The Commission also invites commenters to discuss (1) whether surcharges discourage inter-regional and inter-market trading in securities issues that have nation-wide trading interest, and if so, at what level, on a per-movement or annual cost basis, those consequences would likely occur;<sup>37</sup> or (2) whether policy requires direct interfaced service users to pay full cost for the higher settlement expenses associated with the interface.

The Commission further invites commenters to discuss whether surcharges on third-party interface movements are consistent with Commission and self-regulatory organization ("SRO") initiatives that mandate book-entry depository settlement, including settlement through depository interfaces, of certain inter-dealer and institutional transactions. For example, rules of the national securities exchanges, the National Association of Securities Dealers ("NASD"), and the Municipal Securities Rulemaking Board ("MSRB") require book-entry settlement of inter-dealer and institutional trades.<sup>38</sup> To comply with these rules, settlement between sole participants of different clearing agencies, particularly banks acting as settlement agents for

copy ID input): File No. SR-DTC-80-5; Securities Exchange Act Release No. 17342 (Nov. 26, 1980), 45 FR 80223 (Dec. 3, 1980) (scaled zone charges designed to encourage deposit early, rather than late, in the day). Indeed, although DTC states that its latest fee schedule revision moves its service fees closer to cost-based pricing, the proposal continues several above- and below-cost fees to encourage efficient participant use of DTC services and to subsidize, in particular, services involving bearer municipal securities. See File No. SR-DTC-85-06.

<sup>33</sup> DTC participants effected approximately 206,200 book-entry deliveries each day during 1984 and approximately 5,942 dual-participant and third-party deliveries each day during January 1984 (approximately 3% of the average daily book-entry deliveries). Based on that volume data, this increase would generate approximately \$1 million annually. This revenue, combined with revenue from the fee to NSCC approved today in Securities Exchange Act Release No. 23082 (March 31, 1986), would appear to recover DTC's incremental costs.

<sup>34</sup> See Securities Exchange Act Release No. 18823 (June 21, 1982), 47 FR 28512 (June 30, 1982).

<sup>35</sup> See, e.g., NSCC Registration Order; BSPS Municipal Order; and Securities Exchange Act Release No. 12954, 41 FR 49722 (November 10, 1976), in which the Commission developed the basic characteristics of a national clearance and settlement system.

<sup>36</sup> OAS also provides the following benefits: (1) One central delivery location for physical certificates, which reduces certificate handling and associated costs; (2) trade settlement in one CNS system, which thereby increases netting and reduces fails; (3) one daily money settlement, which means fewer bank accounts to reconcile and fewer cash transfers; (4) one set of position and activity reports, which reduces clerical time, improves management control, and simplifies audit trails; and (5) use of one clearing agency processing system, which reduces costs.

<sup>37</sup> In that regard, the Commission invites commenters to address whether limiting interfaced service surcharges to the established fee for receipt of securities by book-entry movement might minimize the potential adverse consequences participant-identified surcharges may pose for National System and other statutory goals. Commenters are also invited to address the costs, benefits and implications for National system and statutory objectives for permitting depositories to recover some, but not all, of the interfaced service costs.

<sup>38</sup> See, e.g., New York Stock Exchange Rule 387.



institutional accounts, must use depository third-party delivery services.

It could be argued that institutional customers would choose to avoid the additional costs associated with interdepository settlements (assuming depositories imposed participant-identified surcharges for interdepository settlements) by selecting, either generally or trade-by-trade, an agent bank and broker that participated in the same depository. Accordingly, the Commission invites comment on the market impact of that behavior and whether such cost avoidance trading strategies are likely to occur given current surcharge fees (\$.70).

Participant-identified surcharges also may impede competition among brokers and dealers. By increasing the costs to a firm that trades with participants in other depositories, interface surcharges arguably might affect the willingness of a firm to do business with such participants and to execute trades in various market centers. Accordingly, the Commission invites commenters to address whether interdepository settlement surcharge cost-avoidance trading strategies, particularly by municipal securities dealers,<sup>39</sup> may cause some dealers to trade only within their depository membership and thereby sacrifice better prices or service quality. Conversely, the Commission invites commenters to address why settlement cost surcharges should not be permitted when actual costs for inter-regional trades are higher. Finally, the Commission invites comment whether heavy inter-regional users should be permitted to take advantage of the OAS opportunity, without absorbing the costs of multiple depository membership, and at the expense of infrequent interface users.

DTC's participant-identified surcharges may also limit competition among clearing agencies, by hampering the willingness of firms to participate in the other depositories.<sup>40</sup> Although the Commission has no basis for concluding that DTC's book-entry interface surcharge to date has materially damaged competition across markets or regions, the Commission invites commenters to submit evidence concerning such effects, if any.

One possible alternative to participant-identified surcharges is to mutualize interface service costs among some or all depository users. Mutualization of interface service costs, however, results in depository

participants whose activity involves limited use of those services subsidizing those participants who use interfaced services frequently. Moreover, mutualized interfaced service costs could encourage excessive use of interfaced services by heavy inter-regional depository users. Accordingly, the Commission invites comment on the extent to which such subsidies are appropriate or inappropriate.<sup>41</sup>

#### b. Dual-Participant Book-Entry Movements

Dual-participant interface movements are securities deliveries and receipts from a dual participant's account at one depository to its account at another depository. These interface movements do not involve a delivery to a third party, but reflect an inventory adjustment by the dual participant. Dual participants make dual-participant interface movements to satisfy anticipated securities delivery obligations at the receiving depository's affiliated clearing corporation or to dealers and customers who use the receiving depository.<sup>42</sup> Dual participants also make these interface movements to take advantage of price discounts or other special services offered by the receiving depository.<sup>43</sup>

<sup>39</sup> In that regard, commenters should address the extent to which there are positive and negative externalities from book-entry interface deliveries; that is, benefits that flow to all depository users from the interfaced service activity of some depository users. Book-entry interfaces enable depository participants to receive and redeliver securities across markets more cheaply, more reliably and more expeditiously than through physical deliveries. To that extent, National System interfaces offer all depository participants, including those who benefit from interface activity only indirectly, safe, economical and efficient turnaround processing. That automated capability would appear to enhance money settlement processing by expanding the scope of funds payments netting and by centralizing the flow of funds incident to National System securities deliveries.

<sup>40</sup> The Commission understands that dual participants also effect a dual-participant interface movement as a first step to effecting delivery to a sole participant at the receiving depository. Because third-party interface movements do not always identify the delivering participant, receivers of multiple third-party deliveries in the same issue can be confused about the origin of delivery and occasionally will reject such deliveries (which increases the deliverer's overnight financing costs). To avoid these costs, the Commission understands that dual participants use dual-participant interface movements, followed by intradepository book-entry movements, to effect deliveries to sole participants at the other depository.

<sup>41</sup> Dual-participant interface movements enable dual participants to simplify dividend, interest, and securities position accounting operations by concentrating their inventory in one depository.

Several commenters supported mutualization of dual-participant book-entry movement costs among all participants using book-entry delivery services. They expressed concern that participant-identified surcharges could discourage interface use, and also contended that dual-participant interface provide both direct benefits to interface users as well as indirect benefits to all National System participants. In this regard, the availability of dual-participant interface services facilitates same-day turnaround of securities, which reduces overnight financing costs and increases debt and liquidity in the various market centers that constitute the National Market System. They permit broker-dealers active in several market centers to complete, on a same-day basis, physical securities deliveries to customers who do not maintain accounts (directly or through bank custodians) at National System depositories.

It is possible that participant-identified surcharges on dual-participant deliveries, as opposed to mutualization of dual-participant delivery costs, affects National System service innovation. Unless a depository can have reasonable assurance that new services will be used in sufficient volume to justify development risks and exposures, there may be little incentive to innovate. The Commission invites commenters to address the extent to which, and the level at which, participant-identified surcharges on dual-participant book-entry movements could inhibit the flow of securities among securities depositories, or could otherwise stifle incentives to innovate.<sup>44</sup> Recent depository competition, for example, has generated new services that expand the scope and depth of the National System,<sup>45</sup> with tangible benefits to all National System users.<sup>46</sup>

<sup>44</sup> Surcharges could dissuade some dual participants from making full use of interface because of the fees associated with such movements. This risk could be exacerbated by the difficulty in assuring that surcharges don't exceed the fully-allocated cost of providing dual-participant interface delivery services.

<sup>45</sup> MSTC was the first depository to develop services for bearer municipal bonds, and has developed unique, automated stock loan and same-day funds settlement systems. These services increase efficiency and safety by allowing securities to flow to an automated centralized lending system that includes prudent safeguards to protect participants in that market.

<sup>46</sup> Participation in more than one depository may not be inconsistent with the goal of one-account settlement. Although dual participants use the services of more than one depository and clearing corporation, most dual participants designate only one clearing corporation and depository for routine settlement of their clearing agency activity.

<sup>39</sup> See note 28, *supra*.

<sup>40</sup> See *infra* at notes 40-45 for a discussion of depository competition and the benefits of dual participation to the National System.



DTC argued that identified surcharges to dual participants for dual-participant interface movements further the equitable allocation of fees under the Act through cost-based pricing. According to DTC, because only those participants using the dual-participant delivery services directly benefit from that service, only those participants should pay the cost of that service. Thus, although dual-participant activity is valuable to an efficient National System, mutualization of dual-participant book-entry movement costs could result in OAS depository participants subsidizing dual participants.<sup>47</sup> Commenters may wish to consider whether such subsidies reflect an inappropriate "tax" on OAS users or are appropriate in light of the benefits they provide to all depository users.<sup>48</sup> It also is unclear whether dual-participant surcharges, when considered in connection with the other costs of effecting securities transactions, are sufficiently significant that they would have a material effect on participants' willingness to use interfaces. If that is the case, it is unlikely that such surcharges would have the deleterious effect on the National System or service innovation predicted by proponents of mutualization.

#### IV. Conclusion

*A. File Nos. SR-DTC-77-3, SR-DTC-77-10 (Part), SR-MSTC-77-1 and SR-PSDTC-77-1*

For the reasons discussed above, the Commission has determined to withhold approval of the proposed rule changes (File Nos. SR-DTC-77-3, SR-MSTC-77-1, SR-PSDTC-77-1 and SR-DTC-77-10)

<sup>47</sup> Under a mutualized fee arrangement, dual participants would pay a fee at each depository equal to the per-unit book-entry movement charge for a delivery at one depository and a receipt at the second depository. The depository interface account would not be charged at either depository; a dual participant would not be surcharged at either depository; and non-dual participants, through mutualization, would absorb only their depository's per-unit charge that is not otherwise recoverable.

<sup>48</sup> Mutualization of dual-participant interface movement costs among all users of book-entry delivery services may not entail a significant tax on non-dual participants. Statistics provided by DTC, MSTC and PSDTC indicate that dual-participant movements account for approximately one-third of the total interface deliveries. Because dual-participant deliveries commonly are "free" (i.e., do not require related money payments) and because they increase the likelihood of netted deliveries in depository eligible securities issues, the incremental cost of processing dual-participant deliveries would appear to be nominal in relation to other interdepository deliveries. Moreover, dual-participant interface movements generally should increase the efficiency of book-entry activities for all depository participants. Thus, it would appear that virtually all participants benefit indirectly from the interface efficiencies created by dual-participant activity.

that would establish a no-charge policy for certain linked and interfaced services, pending a decision whether participant-identified surcharges for interfaced services are consistent with the Act.

*B. File No. SR-DTC-77-10 concerning surcharges to participants for interfaced services (third-party and dual-participant book-entry movements)*

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to participant-identified surcharges on third-party and dual-participant book-entry movements and those related aspects of File No. SR-DTC-77-10. The Commission will consider, as a part of the disapproval proceeding, all comments previously submitted in connection with the proposed rule changes discussed in this order.

Interested persons are invited to submit written data, views and arguments regarding the proposed rule change by May 30, 1986. Persons desiring to submit written data, views or arguments should file six copies thereof with the Secretary of the Commission, 450 5th Street, NW., Washington, DC 20549. Reference should be made to file No. SR-DTC-77-10.

Copies of the submission (DTC-77-10), all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those which may be withheld from the public in accordance with the provision of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing and of any subsequent amendments also will be available at the principal office of DTC.

By the Commission.

John Wheeler

Secretary.

[FR Doc. 86-8047 Filed 4-9-86; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-23099; File No. SR-NASD-86-8]

#### Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

that on April 1, 1986, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The following is the full text of a proposed rule change by the National Association of Securities Dealers, Inc. ("NASD") relating to a modification to paragraph (c)(1)(B) of the Rules of Practice and Procedures for the Small Order Execution System approved by the Commission in SR-NASD-84-28 and a modification to the facilities description of the Small Order Execution System ("SOES") for transactions in NASDAQ securities approved by the Commission in SR-NASD-84-26 and SR-NASD-85-31. (Material to be deleted is in brackets, new material is italicized).

#### Facilities Description of the Small Order Execution System.

*The SOES facilities description filed with and approved by the Commission in SR-NASD-84-26 and 85-31 is herewith amended to provide that unpreferred orders entered in SOES will be executed in rotation only at the best bid or offer currently displayed in NASDAQ against those SOES active market makers whose current quotation is at or nearest (best in SOES) to the best bid or offer currently displayed in the NASDAQ system.*

#### Rules of Practice and Procedures for the Small Order Execution System.

#### Paragraph (c) Participation Obligations in SOES.

##### (1)(B) SOES Order Entry Firms.

Only agency orders of limited size, as defined herein, received from public customers may be entered by a SOES Order Entry Firm into SOES for execution against a SOES Market Maker. Agency orders in excess of the limited size may not be divided into smaller parts for purposes of meeting the size requirements for orders entered into SOES. SOES will accept both market and limit orders for execution; however, limit orders not immediately executed due to price will be returned to the SOES Order Entry Firm. Orders may be preferred to a specific SOES Market Maker or may be unpreferred, thereby resulting in execution in rotation against [all] SOES Market Makers. [;



however, a SOES Market Maker in a particular SOES security that is also registered as a SOES Order Entry Firm is prohibited from entering an order in that security preferred to himself.] Orders may be entered in SOES by the SOES Order Entry Firm through either its NASDAQ terminal or computer interface, and will receive an immediate execution report on the terminal screen and printer, if requested, or through the computer interface, as applicable. All entries in SOES shall be made in accordance with the procedures and requirements set forth in the SOES User Guide.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of SOES is to improve the efficiency of execution of transactions in NASDAQ securities through the use of new data processing and communications techniques. Unpreferred orders entered in SOES are presently executed in rotation against all active SOES Market Makers at the best price displayed in the NASDAQ with regard to the market maker's current quotation in NASDAQ. Under the proposal contained herein, unpreferred orders will be executed in rotation against a SOES Market Maker, at the inside market, only if his current quotation is at or nearest (best in SOES) to the best bid or offer currently displayed in the NASDAQ system. This will encourage competition for order flow in SOES on the basis of the best displayed price by a SOES market maker, thereby further encouraging the dissemination of competitive quotes in NASDAQ, while continuing to assure the execution of the customer's order at the inside market. An important aspect of the efficiency

of execution provided SOES is the cost savings to member firms provided by the automatic reporting and locked-in trade features of SOES. As currently formulated, the SOES rules prohibit a SOES Order Entry Firm that is also a SOES Market Maker from entering customer orders that are self-preferred. This rule prevents members from self-preferencing orders in order to take advantage of the automatic reporting and locked-in trade feature of the system. The impact of this prohibition is primarily upon smaller members that do not operate internal automated order routing and execution systems. In order to alleviate this burden upon smaller members, the SOES rules have been amended to permit the entry of self-preferred customer orders in order to take advantage of the processing efficiencies of SOES for such transactions, thereby reducing the member's cost.

The statutory basis for the further development and implementation of SOES is found in section 11A(a)(1)(B) and (C)(i), 15A(b)(6), and 17A(a)(1)(B) and (C) of the Securities Exchange Act of 1934 ("Act"). Section 11A(a)(1)(B) and (C)(i) sets forth the Congressional goal of achieving more efficient and effective market operations and the economically efficient execution of transactions through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market . . ." Section 17A(a)(1)(B) and (C) sets forth the Congressional goal of reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The Association believes that the modification to SOES will further these ends by providing an enhanced mechanism for the efficient and economic execution and clearance of transaction in over-the-counter securities.

### B. Self-Regulatory Organization's Statement on Burden on Competition

SOES is a service to which participants subscribe on a voluntary basis and as such the Association believes that the modifications proposed herein impose no burden on competition. To the extent that any burden on competition may be found to exist, the Association believes that the

benefit of increased efficiency of SOES and encouragement of the display of competitive quotes in NASDAQ to attract order flow through SOES will outweigh any potential burden upon competition and materially advance the purposes to be served under the foregoing sections of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants, or Others

Comments were neither solicited nor received in connection with the proposed modification to SOES.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period as the Commission may designate up to 120 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file



number in the caption above and should be submitted by May 1, 1986.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 2, 1986.

John Wheeler,  
Secretary.

[FR Doc. 86-8049 Filed 4-9-86; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### Aviation Proceedings; Application Filed With the Department on April 4, 1986; Aeroflot Soviet Airlines

The due date for answers, conforming application, or motions to modify scope

are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Apr. 4, 1986.....	43937	Aeroflot Soviet Airlines, c/o James M. Burger, McCamish, Ingram, Martin, Brown & McCullough, 2828 Pennsylvania Avenue, NW., Washington, DC 20007. Application of Aeroflot pursuant to Section 402 of the Act and Subpart Q of the regulations requests authority by foreign air carrier permit to conduct scheduled combination services between the U.S.S.R. and the United States. Answers may be filed by 12 noon, April 11, 1986.

Phyllis T. Kaylor,  
Chief, Documentary Services Division.

[FR Doc. 86-8059 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-62-M

#### Aviation Proceedings; Proposed Revocation of the Section 401 Certificates of All Star Airlines, Inc.

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of Order to Show Cause, (Order 86-4-9) Docket 43936.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order revoking the certificates of All Star Airlines, Inc.

DATE: Persons wishing to file objections should do so no later than April 25, 1986.

ADDRESSES: Responses should be filed in Docket 43936 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590 and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Carol A. Szekely, Special Authorities Division, P-47, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590, (202) 755-3812.

Dated: April 4, 1986.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-8057 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-62-M

#### Aviation Proceedings; Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96-

192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80-2-69 established the first interim SFFL and Order 86-1-72 established the currently effective two-month SFFL applicable through March 31, 1986.

In establishing the SFFL for the two-month period starting April 1, 1986, we have projected nonfuel costs based on the year ended December 31, 1985 data, and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department.

By Order 86-4-19 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic.....	1.0966
Latin America.....	1.2929
Pacific.....	1.2276
Canada.....	1.2756

#### FOR FURTHER INFORMATION CONTACT: Julien R. Schrenk (202) 472-5126.

By the Department of Transportation.

Dated: April 7, 1986.

Matthew V. Scocozza,  
Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-8056 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-62-M

#### Aviation Proceedings; Order Adjusting International Cargo Rate Flexibility Level

On January 1, 1985, the Department of Transportation assumed jurisdiction over the regulation of international air cargo rates. The Department seeks to place maximum reliance on the marketplace in regulating such rates. In so doing we have adhered to the Civil Aeronautics Board's policy statement, PS-109, which established geographic

zones of cargo pricing flexibility, within which cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances. This policy was designed to give carriers the greatest flexibility in establishing and adjusting rates to respond to changes in costs and competitive conditions, while assuring that carriers do not abuse their market power.

The Policy Statement established Standard Foreign Rate Levels (SFRL) for each market as the bases for the flexibility zones. The SFRL for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the relevant ratemaking entity. The first adjustment was effective April 1, 1983. By Order 85-11-27, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the six-month period starting April 1, 1986, we have projected nonfuel costs based on the year ended December 31, 1985, data and have determined fuel prices on the basis of the latest experienced monthly fuel cost levels as reported to the Department by the carriers.

By Order 86-4-8 cargo rates may be increased by the following adjustment factors over the April 1, 1982, level:

Atlantic.....	.9532
Western Hemisphere.....	1.0305
Pacific.....	.9452

#### FOR FURTHER INFORMATION CONTACT: Julien Schrenk (202) 472-5126.

By the Department of Transportation.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 86-8058 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-62-M



**Federal Highway Administration****Environmental Impact Statement;  
Chatham County, Georgia Project F-  
111-1(16)**

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**FOR FURTHER INFORMATION CONTACT:**

James Erickson, District Engineer,  
Federal Highway Administration, Suite  
300, 1720 Peachtree Road, NW., Atlanta,  
Georgia 30309, telephone (404) 347-4751,  
or Peter Malphurs, State Environment/  
Location Engineer, 3993 Aviation Circle,  
Atlanta, Georgia 30336, telephone (404)  
696-4634.

**SUPPLEMENTARY INFORMATION:** The  
FHWA, in cooperation with the Georgia  
Department of Transportation (Georgia  
DOT) will prepare an environmental  
impact statement (EIS) on a proposal to  
construct a new location connector (four  
lane divided roadway) from Abercorn  
Street/S.R. 204 northeast to S.R. 21/1-  
516/Lynes Parkway. Project length  
varies between approximately 5.7 miles  
(Alternate A) and 6.7 miles (Alternate  
B). The proposed work is necessary to  
accommodate existing and future traffic  
demand resulting from the continued  
southerly growth in the Savannah area.

Two build alternatives and the no-  
build alternative are currently under  
consideration.

Letters describing the proposed action  
and soliciting comments have been sent  
to appropriate Federal, State and local  
agencies, and to private organizations  
and citizens who have previously  
expressed interest in this proposal. A  
formal scoping meeting with the  
project's "cooperating agencies" will be  
held. A public hearing will also be held.  
Public notice will be given of the time  
and place of the hearing.

To ensure that the full range of issues  
related to this proposed project are  
addressed and all significant issues  
identified, comments and suggestions  
are invited from all interested parties.  
Comments or questions concerning this  
proposed action and the EIS should be  
directed to the FHWA at the address  
provided above.

The catalog of Federal Domestic  
Assistance Program Number is 20.205  
*Highway Research, Planning and  
Construction*. The provisions of OMB  
Circular No. A-95 regarding State and  
local clearinghouse review of Federal  
and Federally assisted programs and  
projects apply to this program.

Issued on: April 3, 1986.

James Erickson,

*District Engineer, Federal Highway  
Administration, Atlanta, Georgia.*

[FR Doc. 85-8030 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-22-M

**Environmental Impact Statement;  
Franklin County, KY**

**AGENCY:** Federal Highway  
Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** FHWA is issuing this notice  
to advise the public that an  
environmental impact statement will be  
prepared for a proposed highway project  
in Franklin County, Kentucky.

**FOR FURTHER INFORMATION CONTACT:**

Robert E. Johnson, Division  
Administrator, FHWA, 330 W.  
Broadway, P.O. Box 536, Frankfort,  
Kentucky 40602, Phone (502) 227-7321;  
FTS 352-5468.

**SUPPLEMENTARY INFORMATION:** The  
FHWA, in cooperation with the  
Kentucky Transportation Cabinet,  
intends to prepare an EIS for a proposal  
to improve US 127 in Franklin County,  
Kentucky. The proposed alternates  
under consideration, at this time, consist  
of three "build" alternates as well as the  
"no-build" alternative. Postponement of  
the project has also been considered.  
The "build" alternates involve different  
combinations of the various alignments  
within a basic corridor.

An early public information meeting  
was held on the proposed action on  
November 20, 1984, in the area of the  
proposed project. The input received at  
that meeting is under consideration. An  
opportunity for a formal location/design  
public hearing will be advertised and  
held as appropriate. No formal scoping  
meeting is planned.

To ensure that the full range of issues  
related to the proposed action are  
addressed and all significant issues  
identified, comments and suggestions  
are invited from all interested parties.  
Comments or questions concerning this  
proposed action and the EIS should be  
directed to the FHWA at the address  
provided above.

The draft EIS will be ready for public  
review and comment in late June 1986.

Issued on March 31, 1986.

Robert E. Johnson,

*Division Administrator, Frankfort, Kentucky.*

[FR Doc. 86-7981 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-22-M

**Research and Special Programs  
Administration****Hazardous materials; Applications for  
Renewal or Modification of  
Exemptions or Applications To  
Become a Party to an Exemption**

**AGENCY:** Research and Special Programs  
Administration, DOT.

**ACTION:** List of applicants for renewal or  
modification of exemptions or  
application to become a party to an  
exemption.

**SUMMARY:** In accordance with the  
procedures governing the application  
for, and the processing of, exemptions  
from the Department of Transportation's  
Hazardous Materials Regulations (49  
CFR Part 107, Subpart B), notice is  
hereby given that the Office of  
Hazardous Materials Transportation has  
received the applications described  
herein. This notice is abbreviated to  
expedite docketing and public notice.  
Because the sections affected, modes of  
transportation, and the nature of  
application have been shown in earlier  
Federal Register publications, they are  
not repeated here. Except as otherwise  
noted, renewal applications are for  
extension of the exemption terms only.  
Where changes are requested (e.g. to  
provide for additional hazardous  
materials, packaging design changes,  
additional mode of transportation, etc.)  
they are described in footnotes to the  
application number. Application  
numbers with the suffix "X" denote  
renewal; application numbers with the  
suffix "P" denote party to. These  
applications have been separated from  
the new applications for exemptions to  
facilitate processing.

**DATES:** Comment period closes March  
26, 1986.

**ADDRESS COMMENTS TO:** Dockets  
Branch, Research and Special Programs  
Administration, U.S. Department of  
Transportation, Washington, DC 20590.

Comments should refer to the  
application number and be submitted in  
triplicate.

**FOR FURTHER INFORMATION CONTACT:**  
Copies of the applications are available  
for inspection in the Dockets Branch,  
Room 8426, Nassif Building, 400 7th  
Street, SW., Washington, DC.

Applica- tion No.	Applicant	Re- newal of exem- p- tion
2136-X	U.S. Department of Defense, Falls Church, VA.	2136
2582-X	Synthatron Corporation, Parsippany, NJ.	2582
3004-X	Air Products and Chemicals, Inc., Allen- town, PA.	3004



Application No.	Applicant	Renewal of exemption
3004-X	U.S. Department of Defense, Falls Church, VA.	3004
3449-X	Morton Thiokol, Inc., Huntsville, AL	3549
3549-X	U.S. Department of Energy, Washington, DC.	3549
4039-X	Airco Industrial Gases, Murray Hill, NJ	4039
4453-X	El Dorado Chemical Company, St. Louis, MO.	4453
4588-X	U.S. Department of Energy, Washington, DC.	4588
4850-X	Ensign Bickford Company, Simsbury, CT	4850
4850-X	Pengo Industries, Inc., Fort Worth, TX	4850
5038-X	Synthatron Corporation, Parsippany, NJ	5038
5206-X	El Dorado Chemical Company, St. Louis, MO.	5206
5704-X	Morton Thiokol, Inc., Huntsville, AL	5704
6089-X	U.S. Department of Energy, Washington, DC.	6089
6154-X	Uniroyal Chemical Company, Inc., Mid-disburg, CT.	6154
6305-X	Appalachian Explosives, Inc., Romney, WV.	6305
6309-X	Insta-Foam Products, Inc., Joliet, IL	6309
6325-X	Wampum Hardware Co., New Galilee, PA.	6325
6325-X	Belmont Mine Supply Co., Inc., New Galilee, PA.	6325
6325-X	Wampum Distributing Co., New Galilee, PA.	6325
6325-X	Northern Ohio Explosives, Inc., New Galilee, PA.	6325
6325-X	Armstrong Explosives Co., New Galilee, PA.	6325
6418-X	Great Lakes Chemical Corp., West Lafayette, IN (see footnote 1).	6418
6484-X	W.R. Grace & Company, Lexington, MA.	6484
6497-X	FMC Corporation, Philadelphia, PA.	6497
6859-X	Pyrotechnics Devices, Incorporated, Denver, CO.	6859
6902-X	Synthatron Corporation, Parsippany, NJ	6902
6908-X	The Garrett Corporation, Tempe, AZ	6908
6929-X	U.S. Department of Energy, Washington, DC.	6929
6962-X	U.S. Department of Energy, Washington, DC.	6962
7032-X	Polaroid Corporation, Needham Heights, MA.	7032
7040-X	Polaroid Corporation, Needham Heights, MA.	7040
7052-X	TNR Technical, Inc., Deer Park, NY	7052
7052-X	DME Corporation, Ft. Lauderdale, FL	7052
7052-X	Sippican Ocean Systems, Inc., Marion, MA.	7052
7409-X	Puerto Rico Maritime Shipping Authority, San Juan, Puerto Rico.	7409
7498-X	Allied Corporation, Morristown, NJ	7498
7654-X	J.T. Baker Chemical Co., Phillipsburg, NJ.	7654
7774-X	Pipe Recovery Systems, Incorporated, Houston, TX (see footnote 2).	7774
7811-X	J.T. Baker Chemical Company, Phillipsburg, NJ.	7811
7876-X	Allied Corporation, Morristown, NJ	7876
7885-X	The Mercoid Corporation, Chicago, IL	7885
7929-X	Trojan Corporation, Salt Lake City, UT	7929
7959-X	Woods Hole, Marthas Vineyard & Nantucket Steamship, Woods Hole, MA.	7959
7987-X	Stauffer Chemical Company, Westport, CT.	7987
8009-X	Consolidated Petroleum Explorations, Inc., Indianapolis, IN.	8009
8074-X	Airco, The BOC Group, Inc., Murray Hill, NJ.	8074
8091-X	Mountain Bell, Denver, CO	8091
8091-X	Northwestern Bell, Omaha, NE	8091
8091-X	Pacific Northwest Bell, Portland, OR	8091
8156-X	Synthatron Corporation, Parsippany, NJ	8156
8156-X	Cryogenic Rare Gas Labs, Inc., Metuchen, NJ.	8156
8337-X	Industrial & Municipal Engineering, Inc., Calva, IL	8337
8386-X	J.J. Maugel Co., Burbank, CA	8386
8409-X	Em Science, Cincinnati, OH	8409
8445-X	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	8445
8445-X	Monsanto Company, St. Louis, MO	8445
8445-X	McDonnell, Douglas Corporation, St. Louis, MO.	8445
8450-X	LTV Aerospace and Defense Company, Dallas, TX.	8450

Application No.	Applicant	Renewal of exemption
8554-X	Atlas Powder Company, Dallas, TX (see footnote 3).	8554
8582-X	Boston and Maine Corporation, North Billerica, MA.	8582
8582-X	Maine Central Railroad Company, North Billerica, MA.	8582
8582-X	Delaware & Hudson Railway Company, North Billerica, MA.	8582
8597-X	McDonnell, Douglas Corp., Saint Louis, MO.	8597
8668-X	Argyle, Division of Sherwood Medical, St. Joseph, MO.	8668
8708-X	Trical, Inc., Hollister, CA (see footnote 4).	8708
8761-X	The Heil Company, Milwaukee, WI	8761
8780-X	Container Corporation of America, Wilmington, DE.	8780
8822-X	Certified Tank Manufacturing, Inc., Wilmington, CA.	8822
8824-X	Pengo Industries, Inc., Fort Worth, TX	8824
8838-X	Olin Corporation, Stamford, CT	8838
8842-X	HTL Industries, Inc., Duarte, CA	8842
8843-X	Pengo Industries, Inc., Fort Worth, TX	8843
8843-X	Owen Oil Tools, Inc., Fort Worth, TX	8843
8844-X	Beall, Inc., Billings, MT	8844
8845-X	Pengo Industries, Inc., Fort Worth, TX	8845
8871-X	Bulk Lift International Inc., Carpenterville, IL.	8871
9143-X	McCarthy Tank and Steel Company, Bakersfield, CA.	9143
9166-X	The Composite Engineering Company, Corona, CA.	9166
9221-X	Applied Companies, San Francisco, CA (see footnote 5).	9221
9222-X	Seaboard Chemical Corporation, Jamestown, NC.	9222
9222-X	Wilms Trucking Company, Inc., Charleston Heights, SC.	9222
9222-X	Caldwell Systems, Inc., Lenoir, NC	9222
9245-X	Conlico Container, Norwalk, CA	9245
9248-X	Kross Inc., Valencia, CA	9248
9251-X	Orchard Supply Company of Sacramento, Sacramento, CA.	9251
9262-X	Jet Research Center, Inc., Arlington, TX	9262
9262-X	Pengo Industries, Inc., Fort Worth, TX	9262
9316-X	Fluoroware, Inc., Chaska, MN (see footnote 6).	9316
9351-X	Bemco Inc., Chatham, Ontario, Canada (see footnote 7).	9351

<sup>1</sup> To authorize a liquid mixture containing 67.7 percent chloroform, Class B poison, as an additional commodity for shipment in certain DOT Specification cargo tanks.

<sup>2</sup> To authorize additional size cylinders for shipment of bromine trifluoride.

<sup>3</sup> To authorize water as an additional mode of transportation.

<sup>4</sup> To expand on the origination and destination points for shipment of liquid chloroform in non-DOT specification steel drums.

<sup>5</sup> To authorize a new material of construction.

<sup>6</sup> To authorize additional size containers of 15 and 30 gallons capacity and to include additional corrosive materials and other hazard classes such as oxidizers and flammable liquids.

<sup>7</sup> To authorize certain flammable compressed gases and Class A or B poisons to be shipped in non-DOT specification welded cylinders similar to DOT Specification 3AA cylinders.

Application No.	Applicant	Parties to exemption
4453-P	Austin Sales, Inc., Vansant, VA	4453
6563-P	Monongahela Power Company, Fairmont, WV.	6563
7052-P	University of Washington, Seattle, WA	7052
7052-P	Beckman Instruments, Inc., Fullerton, CA.	7052
8390-P	Jones-Hamilton Co., Newark, CA	8390
8445-P	CECOS International, Inc., Buffalo, NY	8445
8445-P	Browning-Ferris Industries, Houston, TX	8445
8451-P	Monongahela Power Company, Fairmont, WV.	8451
8845-P	Apollo Perforators Inc., Odessa, TX	8845
9064-P	Fibre Ottiche Sud S.p.A., Battipaglia, Italy.	9064
9275-P	A.H. Robins Company, Richmond, VA	9275
9275-P	Noxell Corporation, Hunt Valley, MD	9275
9277-P	FMC Corporation, Philadelphia, PA	9277
9280-P	Union Carbide Corporation, Danbury, CT	9280

Application No.	Applicant	Parties to exemption
9355-P	Black & Decker Corporation, Shelton, CT.	9355
9372-P	CRC Wireline, Inc., Grand Prairie, TX	9372
9449-P	Union Carbide Inter-America, Incorporated, Danbury, CT.	9449
9480-P	Airco, The BOC Group, Inc., Murray Hill, NJ.	9480
9480-P	E.I. du Pont de Nemours & Co., Inc., Wilmington, DE.	9480
9571-P	United States Department of State, Washington, DC.	9571

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 3, 1986.

**Joseph T. Horning,**  
Chief, Exemptions and Approvals Division,  
Office of Hazardous Materials  
Transportation.

[FR Doc. 86-7957 Filed 4-9-86; 8:45 am]

**BILLING CODE 4910-60-M**

## Hazardous Materials; Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo only aircraft, 5—Passenger-carrying aircraft.

**DATE:** Comment period closes May 12, 1986.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW, Washington, DC.



## NEW EXEMPTIONS

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
9583-N	Flopetrol Johnston, Houston, TX	49 CFR 173.302, 173.304, 173.34(d), 175.3.	To authorize shipment of certain flammable and nonflammable gases or liquids in non-DOT specification oil sample pressure bottles. (modes 1, 2, 3, 4).
9584-N	Flopetrol Johnston, Houston, TX	49 CFR 173.302, 173.304, 173.34(d), 175.3.	To authorize shipment of certain flammable and nonflammable gases or liquids in non-DOT specification gas sample pressure bottles. (modes 1, 2, 3, 4).
9587-N	Dynatherm Corporation, Cockeysville, MD	49 CFR 172.400, 173.206, 175.3.	To authorize shipment of isothermal furnace liners manufactured from inconel 601 schedule 40 pipe, containing limited quantities of sodium or potassium metal, classed as flammable solid, overpacked in DOT-15B or 19B wooden boxes, without labeling except when offered for air transportation. (modes 1, 4).
9589-N	Monsanto Company, St. Louis, MO	49 CFR 173.31(c).	To authorize shipment of monochlorobenzene, classed as a flammable liquid, in a DOT Specification 111A100W1 tank car which has not been retested. (mode 2).
9590-N	Great Lakes Chemical Corp., West Lafayette, IN	49 CFR 173.357(b)(2).	To authorize shipment of a liquid mixture containing 67.7 percent chloropicrin, Class B poison, in DOT Specification 5B metal drums. (mode 1).
9591-N	Brewer Chemical Corporation, Honolulu, HI	49 CFR 173.263(b).	To authorize shipment of hydrochloric acid, classed as a corrosive material, in DOT Specification IM-101 stainless steel portable tanks which have a thinner shell thickness than required. (modes 1, 3).
9592-N	IBCON International, Inc., McKinney, TX	49 CFR 173.154, 173.164, 173.178, 173.182, 173.234, 173.245b.	To manufacture, mark and sell non-DOT specification flexible intermediate bulk bags of approximately 2,200 pounds capacity for shipment of certain flammable, corrosive and oxidizer solids. (modes 1, 2).
9594-N	Monsanto Co., St. Louis, MO	49 CFR 173.190.	To authorize a one-time shipment of a waste white phosphorus mixture, classed as a flammable solid, in a non-DOT specification portable tank secured to a flatbed rail car. (mode 2).
9595-N	IRECO Incorporated, Salt Lake City, UT	49 CFR 173.64.	To authorize shipment for disposal of certain Class A slurry explosives, in two polyethylene, leak-proof bags placed in non-DOT specification metal or fiber containers, not to exceed 55 gallon capacity. (mode 1).
9596-N	L'Air Liquide, Paris, France	49 CFR 173.318, 176.76, 178.338.	To authorize shipment of helium refrigerated liquid, classed as nonflammable gas, in non-DOT specification insulated portable tanks of approximately 10,911 gallons. (modes 1, 3).
9597-N	Minnesota Valley Engineering, Inc., New Prague, MN	49 CFR 173.304(a).	To authorize manufacture, mark and sell of DOT Specification 4L cylinders for shipment of carbon dioxide, refrigerated liquid, classed as a nonflammable gas. (mode 1).
9598-N	PPG Industries, Inc., Pittsburgh, PA	49 CFR 173.288(f).	To authorize shipment of methyl and ethyl chloroformate, classed as a flammable liquid in DOT Specification 106A100W tank cars. (mode 2).
9599-N	Gibson Cryogenics, Inc., El Cajon, CA	49 CFR 173.318, 176.76.	To manufacture, mark and sell non-DOT specification portable tanks constructed of 304 stainless steel with a carbon steel jacket, approximately 4,000 gallon capacity, for shipment of argon, refrigerated liquid, classed as nonflammable gas. (modes 1, 3).
9600-N	Western Executive Air, Santa Ana, CA	49 CFR 172.101, 173.204(c)(3), 173.27, 175.30(a)(1), 175.320(b), Part 107, Appendix B.	To authorize shipment of certain Class A, B and C explosives that are not permitted for air shipment or are in quantities greater than those prescribed for air shipment. (mode 4).
9601-N	Trical, Inc., Hollister, CA	49 CFR 173.357.	To authorize shipment of 100% chloropicrin liquid, classed as Poison B, in non-DOT specification steel drums of approximately 26 gallon capacity. (modes 1, 3).

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 3, 1986.

Joseph T. Horning,  
Chief, Exemptions and Approvals Division,  
Office of Hazardous Materials  
Transportation.

[FR Doc. 85-7958 Filed 4-9-86; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

## Customs Service

## Privacy Act of 1974; System of Records

AGENCY: Customs Service, Treasury.

ACTION: Correction to Notice of System of Records.

SUMMARY: This is a correction to the System Location and to the System Manager(s) and Address of the System of Records for Treasury/Customs .270 Background-Record File of Non-Customs

Employees. This information was not included in the last publication of this System in the Federal Register on July 23, 1985 (50 FR 30054), due to an administrative oversight. The System Location was shown as the offices of district directors in the North Central Customs Region, whereas, the System is maintained in all offices of district directors in every Customs region.

EFFECTIVE DATE: April 10, 1986.

## FOR FURTHER INFORMATION CONTACT:

Charles Bartoldus, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue NW., Room 4148, Washington, DC 20229.

## Amendment to System of Records

The System Location and System Manager(s) and Address for Treasury/Customs .270 Background-Record File of Non-Customs Employees is amended as follows:

## Treasury/Custom .270

## SYSTEM NAME:

Background-Record File of Non-Customs Employees-Treasury/Customs.

\* \* \* \* \*

## SYSTEM LOCATION:

Offices of District Directors. (For addresses, see United States Customs Service-Appendix A.)

\* \* \* \* \*

## SYSTEM MANAGER(S) AND ADDRESS:

District Directors of Customs. (For addresses, see United States Customs Service-Appendix A.)

\* \* \* \* \*

Dated: March 26, 1986.

John F. W. Rogers,  
Assistant Secretary of the Treasury  
(Management).

[FR Doc. 86-7983 Filed 4-9-86; 8:45 am]

BILLING CODE 4820-02-M

## Internal Revenue Service

[Delegation Order No. 143 (Rev. 2)]

Delegation of Authority; Investigations Office, Director, et al.

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.



**SUMMARY:** Delegation Order No. 143 (Rev. 2) redelegates authority to perform certain functions related to the enforcement of 31 CFR 103 (Bank Secrecy Act Regulations) that was delegated to the Commissioner by Department of the Treasury Order No. 105-13, dated September 6, 1985. The text of the delegation Order appears below.

**EFFECTIVE DATE:** April 11, 1986.

**FOR FURTHER INFORMATION CONTACT:** Brian M. Bruh, Office of Investigations, Internal Revenue Service, Washington, DC 20224, (202) 566-5905.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury directive appearing in the *Federal Register* for Wednesday, November 8, 1978.

Richard C. Wassenaar,  
Assistant Commissioner (Criminal Investigation).

#### Order No. 143 (Rev. 2)

Effective Date: April 11, 1986

*Authority To Perform Certain Functions To Enforce 31 CFR 103 (Bank Secrecy Act Regulations)*

1. The authority vested in the Commissioner of Internal Revenue by 31 CFR 103.46(a)(8), to initiate investigations of financial institutions other than banks and brokers or dealers in securities as referenced in 31 CFR 103.46(a)(1) through 103.46(a)(6) for possible criminal violations of 31 CFR Part 103 (except 31 CFR 103.23 and 103.48), is hereby delegated pursuant to 31 CFR 103.46(a)(8) and 26 CFR 301.7701-9(c) to the Director, Office of Investigations and to the Chiefs, Criminal Investigation Division (District Directors in streamlined districts). This authority may not be redelegated.

2. The authority vested in the Commissioner of Internal Revenue by Department of the Treasury Order Number 105-13, to initiate investigations of banks and brokers or dealers in securities referenced in 31 CFR 103.46(a)(1) through 103.46(a)(6) for possible criminal violations of 31 CFR Part 103 (except 31 CFR 103.23 and 103.48), is hereby delegated to the Assistant Commissioner (Criminal Investigation) pursuant to Department of the Treasury Order Numbers 150-37 and 105-13, and Memorandum of Understanding approved September 6, 1985 and Clarification of Memorandum approved January 29, 1986 between the Assistant Secretary (Enforcement and Operations) and the Commissioner, Internal Revenue Service, and 26 CFR

301.7701-9(c). This authority may not be redelegated.

3. The authority vested in the Commissioner of Internal Revenue by Department of the Treasury Order Number 105-13, to perform certain functions related to the enforcement of 31 CFR Part 103, is hereby delegated pursuant to Treasury Order Numbers 150-37 and 105-13, and Memorandum of Understanding approved September 6, 1985 between the Assistant Secretary (Enforcement and Operations) and the Commissioner, Internal Revenue Service and 26 CFR 301.7701-9(c) as follows:

(a) The Director, Data Center is delegated the authority to:

(1) Grant exemptions from the reporting requirements contained in 31 CFR 103.22(a);

(2) Issue requests for lists of financial institution customers whose currency transactions have been exempted from the reporting requirement in 31 CFR 103.22; and

(3) Direct banks to file currency reports as prescribed in 31 CFR 103.22(a)(1) with respect to customers whose transactions had been previously exempted.

(b) The Assistant Commissioner (Examination) is delegated the civil enforcement authority for the compliance aspects of 31 CFR 103.22 (b), (c), (d), (e), and (f) regarding exemptions.

(c) The District Directors are delegated the authority to assure compliance with the requirements of 31 CFR Part 103 by all banks not currently examined by Federal supervisory agencies for safety and soundness.

(d) The authority delegated in (a) above may be redelegated by the Director, Data Center but may not be further redelegated.

(e) The authority delegated in (b) above may be redelegated by the Assistant Commissioner (Examination) but may not be further redelegated.

(f) The authority delegated in (c) above may be redelegated by the District Directors but may not be further redelegated.

4. The authority vested in the Commissioner of Internal Revenue by 31 CFR 103.46(a)(8), to assure compliance with the requirements of 31 CFR Part 103 by those financial institutions not referenced in 31 CFR 103.46(a)(1) through 103.46(a)(6), is hereby delegated pursuant to 31 CFR 103.46(a)(8) and 26 CFR 301.7701-9(c) to the Assistant Commissioner (Examination) and to the Chiefs, Examination Division (District Directors in streamlined districts). This authority may be redelegated by the Assistant Commissioner (Examination) and the Chiefs, Examination Division (District Directors in streamlined

districts) but may not be further redelegated.

5. Delegation Order No. 143 (Rev. 1), effective March 21, 1982, is superseded.

James I. Owens,

Deputy Commissioner.

[FR Doc. 86-8083 Filed 4-9-86; 8:45 am]

BILLING CODE 4830-01-M

#### Secret Service

#### Privacy Act of 1974; Proposed New Routine Uses for an Existing System of Records

**AGENCY:** Secret Service, Treasury Department.

**ACTION:** Notice of proposed new routine uses for an existing system of records.

**SUMMARY:** The purpose of this notice is to propose a singular new routine uses for the United States Secret Service's Financial Management Information System (Treasury/USSS 00.003), last published in the *Federal Register* on July 25, 1985 (50 FR 30393). The routine uses which are proposed would permit the disclosure of information from the United States Secret Service's Financial Management Information System to other Federal agencies, to approved debt collection agencies, and to consumer reporting agencies.

Information will be disclosed under the proposed routine uses only for duly authorized debt collection on behalf of the United States, in accordance with the provisions of Pub. L. 97-365, known as the "Debt Collection Act of 1982," enacted October 25, 1982.

**DATES:** Any interested party may submit written comments regarding this proposal. To be considered, comments must be received within 30 days of the publication of this notice. Unless public comments are received which warrant modification of the proposed routine use, it will become effective May 12, 1986.

**ADDRESS:** Written comments should be forwarded to John J. Kelleher, Chief Counsel, United States Secret Service, 1800 G Street NW., Washington, DC 20223. Comments which are received will be available for public inspection at the above address from 9:00 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Frank Palmer, Chief, Financial Management Division, United States Secret Service, 1800 G Street NW., Washington, DC 20223.

**SUPPLEMENTARY INFORMATION:** In order to increase the efficiency of Government-wide efforts to collect



debts owed to the United States and to provide additional procedures for the collection of debts owed to the United States, the Debt Collection Act of 1982, Pub. L. 97-365, was enacted. This legislation amended the Privacy Act of 1974, 5 U.S.C. 552a, to permit Federal agencies to disclose information for the purpose of collecting money owed to them.

In accordance with the publication requirements of the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), the Secret Service gives notice of the inclusion of new routine uses for Treasury/USSS 00.003. The disclosure of a taxpayer's mailing address for use by officers, employees or agents of the Secret Service for the purpose of locating such taxpayer to collect or compromise a Federal claim against the taxpayer is authorized by section 8(a)(2)(A) of the Debt Collection Act of 1982, and has been determined by Congress to be compatible with the purpose for which the information was collected. The Debt Collection Act of 1982, at section 8(a)(2)(B), likewise authorizes the disclosure of the mailing address of a taxpayer to a consumer reporting agency for the sole purpose of facilitating the preparation of a commercial credit report on the taxpayer for use by the disclosing Federal agency. The disclosure of a taxpayer's address for use in preparing a commercial credit report on the taxpayer has also been found by Congress to be compatible with the purpose for which the information was collected. Therefore, mailing addresses obtained by the Secret Service from the Internal Revenue Service will be disclosed to debt collection agencies only for the purpose of recovering indebtedness owed to the United States. Similarly, such addresses will be disclosed to consumer reporting agencies in conjunction with the preparation of commercial credit reports for use by the Secret Service under the provisions of the Federal Claims Collection Act of 1966.

In addition to taxpayer mailing addresses, other identifying debtor information will be disclosed to consumer reporting agencies for the purpose of obtaining commercial credit reports. Information made available in such reports, such as a debtor's financial ability to repay the debt, will be utilized by the Secret Service in determining what action the Secret Service will take with respect to the collection of the debt. Information contained in the report may be released to a debt collection agency for the enforced collection of the debt or may be referred to the Department of Justice for litigation.

Regulations controlling the referral of claims to the Department of Justice (4 CFR 105.3) require that a referred claim be accompanied by reasonably current credit data indicating that there is a reasonable prospect of effecting enforced collections from the debtor. The preparation of a commercial credit report by a credit reporting agency often provides the only viable means of obtaining necessary information.

Section 13 of the Debt Collection Act of 1982 authorizes the head of an agency or his designee to enter into contracts with debt collection agencies for the purpose of recovering indebtedness owed to the United States. This necessitates the disclosure of significant quantities of data in the debtor's file and also triggers section (m) of the Privacy Act. Consequently, the debt collection agency selected by the Secret Service will be bound by the terms of the contract to comply with the Privacy Act. In addition, the debt collection agency will be "employees" of the Secret Service insofar as the criminal sanctions provided in the Privacy Act are concerned. The Secret Service intends to avail itself of the services of responsible debt collection agencies when such action is appropriate and will incorporate appropriate language in contracts for debt collection that will prohibit the abridgement of protected privacy rights.

Sections 5 and 10 of the Debt Collection Act of 1982 authorize agencies to disclose as a routine use debtor information that is used to effect salary or administrative offsets. Interagency cooperation is often necessary to effect an offset and, therefore, in those instances in which the collection of a debt is sought through administrative offset, the Secret Service will disclose debtor information to other agencies. The Debt Collection Act of 1982 requires that prior to initiating any proceedings to recover a debt through salary offset, the agency must afford the debtor a series of procedural rights including a thirty day advance written notice, an opportunity to review Government records relating to the debt, an opportunity to establish a written schedule for the repayment of the debt and the opportunity for a hearing concerning the existence or amount of the debt. Prior to collection of a debt by administrative offset the debtor must be provided with written notification of the nature and amount of the claim, and opportunity to inspect and copy the records of the Secret Service with respect to the claim, an opportunity for internal agency review and an opportunity to enter into an agreement

for the repayment of the debt. The Secret Service will implement these and the other procedural requirements as more fully set forth at sections 5 and 10 of the Debt Collection Act of 1982 whenever it seeks to collect a debt through salary offset or administrative offset.

Sections 5, 8, 10 and 13 of the Debt Collection Act of 1982 establish that the disclosure of records from Treasury/USSS 00.003 for the purposes previously described is compatible with the purpose for which the records were originally collected.

Pursuant to the requirement of section 3(d)(1)(A) of the Federal Claims Collection Act of 1966, the Secret Service gives notice of its intent to disclose to consumer reporting agencies information contained in Treasury/USSS 00.003 which is related to the identity of a debtor and the history of the debt. The purpose of the disclosure is to make delinquency and default data available to private sector credit grantors. However, the only information which will be disclosed from Treasury/USSS 00.003 to a consumer reporting agency pursuant to the authority set forth in 5 U.S.C. 552a(B)(12), is the individual's name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual, the amount, status and history of the claim, and the agency or program under which the claim arose. Furthermore, such disclosures will be made only when a claim is overdue, and then, only after the debtor has been afforded the due process rights specified in the Debt Collection Act of 1982.

Although authorized as an exception to the Privacy Act (5 U.S.C. 552a(b)(12)) rather than as a routine use exception to that Act (5 U.S.C. 552a(b)(3)), the notice of disclosure to consumer reporting agencies is, at the direction of the Office of Management and Budget, being published at the end of the listing of the routine uses for Treasury/USSS 00.003 in order to maintain editorial consistency.

Dated: March 26, 1986.

John F. W. Rogers,  
Assistant Secretary of the Treasury  
(Management).

For the reasons set out in the preamble, Treasury/USSS 00.003, is amended to read as follows:

#### Treasury/USSS 00.003

##### SYSTEM NAME:

Treasury/USSS-Financial  
Management Division System.



**SYSTEM LOCATION:**

(a) U.S. Secret Service, 1800 G Street, NW., Washington, DC 20223; (b) Components of the Financial Management Information System are geographically dispersed throughout Secret Service field offices. (See below United States Secret Service, Appendix A listing the addresses of Secret Service field offices); (c) U.S. Secret Service Uniformed Division, 1310 L Street, NW., Room 210, Washington, DC 20005; (d) Treasury Police Force, Room 1044, Main Treasury Building, Washington, DC 20220; (e) Special Services Division, U.S. Secret Service, Bldg. 210 Washington Navy Yard, Washington, DC 20374; (f) Presidential Protective Division, U.S. Secret Service, Room 10, Executive Office Building, 17th & Pennsylvania Avenue, NW., Washington, DC 20500; (g) Vice Presidential Protective Division, U.S. Secret Service, Room 295, Executive Office Building, Washington, DC 20500; (h) Dignitary Protective Division, U.S. Secret Service, 1310 L Street, NW., Washington, D.C. 20005; (i) Atlanta Protective Division, U.S. Secret Service, Suite 1100, Equitable Building, 100 Peachtree St., NE., Atlanta, Georgia 30303; (j) Johnson Protective Division, U.S. Secret Service, P.O. Box 927, Stonewall, Texas 78671; (k) Ford Protective Division, U.S. Secret Service, P.O. Box 955, Rancho Mirage, Calif. 92270; (l) Technical Security Division, Room 482, Executive Office Building, Washington, DC 20500; (m) Plains Security Detail, U.S. Secret Service, P.O. Box 308, Plains, Georgia 31780.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

(a) Individuals who are now, or were previously, Secret Service employees; (b) Individuals, contractors, vendors, etc., who are presently doing business with or previously did business with the Secret Service; (c) Individuals who are involved in or were previously involved in tort claims with the Secret Service; (d) Individuals who are now or previously were involved in payments (accounts receivable) with the Secret Service; (e) Individuals who have been recipients of awards.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(a) Records containing information compiled for the purpose of pay, travel, property damage, expenses incurred other than travel, and retirement annuities and taxes; (b) Records containing information of accounts receivable and payable, involving Secret Service employees and other persons; (c) Records containing information of tort claims dealing with Secret Service property, concerning payment and

accounts receivable; (d) Records containing information on the expenditures, anticipated expenditures, and budget studies of the Secret Service; (e) Records of time and attendance of work.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Authority is contained in 31 U.S.C. Section 68, 484, 952, and 1801 thru 1806, and 5 U.S.C. 5514, and 21 U.S.C. 2415.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:**

The routine uses of the records contained in the Financial Management Information System are as follows: (a) Referral to the Internal Revenue Service, U.S. Treasury, GAO, Civil Service and other Federal agencies dealing with the payment and collection of monies concerning Secret Service employees; (b) Referral to the Internal Revenue Service, U.S. Treasury Department, Office of Personnel Management, GAO and other Federal agencies dealing with the payment, collection and audit of monies concerning person who have financial dealings with the Secret Service; (c) To establish and maintain a means of gaining statistical information needed to answer inquiries from other Federal, state and local governments and Congress; (d) To establish a reporting system to Treasury, Office of Management & Budget and the General Accounting Office and Congress of Secret Service expenditures; (e) To establish a means of payments to contractors and vendors for purchases made by Secret Service; (f) Disclosures to other Federal agencies to effect inter-agency salary offset and to affect inter-agency administrative offset; (g) Disclosures to consumer reporting agencies to obtain commercial credit reports; (h) Disclosures to debt collection agencies for debt collection services; (i) Disclosures of current mailing addresses obtained from the Internal Revenue Service, which have become a part of this system, to consumer reporting agencies to obtain credit reports and to debt collection agencies for collection services; (j) Disclosures to appropriate Federal, State, or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order or license; (k) Disclosures to a Federal, state, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or

necessary to the requesting agency's or the bureau's hiring or retention of an employee, or issuance of a security clearance, license, contract, grant, or other benefit; (l) Disclosures to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, settlement negotiations or in connection with criminal law proceedings; (m) Disclosures to foreign governments in accordance with formal or informal international agreements; (n) Disclosures to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (o) Disclosures to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (p) Disclosures to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Debt Collection Act of 1982 (31 U.S.C. 3701(a)(3)) or the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

All records comprising the Financial Management Information System of the U.S. Secret Service are contained in files, microfilm and/or microfiche located at Headquarters, Washington, D.C., Secret Service field offices geographically dispersed throughout the United States, Puerto Rico, and one foreign country, (see location section of this notice and United States Secret Service Appendix A), and Secret Service Protective Divisions. Portions of the indices and information contained in the Financial Management Information System are programmed into computers maintained at Headquarters, U.S. Secret Service, 1800 G Street, NW, Washington, D.C.

**RETRIEVABILITY:**

The Financial Management Information System is indexed by name and/or numbers in the Headquarters office and by name only in the U.S. Secret Service field offices and protective divisions. Access to the



physical files containing records is by number and/or name. Access to the information stored in the computer is also by name and/or number.

**SAFEGUARDS:**

(1) The file jackets, indices and computers containing the record systems located at U.S. Secret Service Headquarters are secured by alarms and other internal security devices in locked rooms with guards on duty on a 24 hour basis; (2) Access to the records is available only to employees responsible for records management and Operational employees who have a need for such information, each of whom holds a top secret security clearance; (3) The file jackets and/or indices comprising the Financial Management Information System in U.S. Secret Service field offices and protective divisions are located in locked filing cabinets and in locked rooms where Secret Service employees are not on duty. Access is limited to employees of the Secret Service holding top secret security clearances.

**RETENTION AND DISPOSAL:**

The retention schedule for records comprising the Financial Management Information System are as follows: (1)

Financial Management Division automated accounting systems foreign disbursement file and paid files are retained for six years; (2) Accounts receivable systems maintained for four years unless they are not liquidated; (3) Systems for holiday, overtime hour and other pay adjustments, enter on duty information, resignations, retirements, reassignments, etc., are held indefinitely; (4) Records on personnel actions, leave, change of station, bonds, health benefits and insurance policies, bank deposits, allotments, etc., are held for six months; All other records are retained in accordance with mandatory GSA. General Records Schedules, 5, 6, & 7. Disposal of records contained in this System is by burning, mulching, or shredding.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director, Office of Administration, 1800 G Street NW., Washington, DC 20223.

**NOTIFICATION PROCEDURE:**

Any individual who wishes to present a request as to whether this system contains a record pertaining to him/her should address his/her inquiry to: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G

Street, NW., Room 908, Washington, DC 20223.

**RECORD ACCESS PROCEDURES:**

Any individual wishing to obtain information on the procedures for gaining access to and contesting records should contact: Freedom of Information and Privacy Acts Officer, U.S. Secret Service, 1800 G Street NW., Room 908, Washington, DC 20223.

**CONTESTING RECORD PROCEDURES:**

See access above.

**RECORD SOURCE CATEGORIES:**

(a) Individuals who are presently or were previously Secret Service employees; (b) Individuals who are presently or were service contractors or suppliers with the Secret Service; (c) Individuals who are presently or were previously involved in tort claims with the Secret Service; (d) Individuals who are presently or were previously involved in collections and disbursement with the Secret Service; (e) Internal Revenue Service; (f) Surviving spouse of deceased personnel.

[FR Doc. 86-7984 Filed 4-9-86; 8:45 am]

BILLING CODE 4810-42-M



# Sunshine Act Meetings

Federal Register

Vol. 51, No. 69

Thursday, April 10, 1986

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### 1

#### EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 11871, Dated April 7, 1986.

PREVIOUS ANNOUNCED TIME AND DATE OF MEETING: 9:30 AM (Eastern Time), Tuesday, April 15, 1986.

CHANGE IN THE MEETING: The following item has been postponed and rescheduled for the April 22, 1986 Commission Meeting: "Proposed Equal Pay Act (EPA) Interpretive Regulations.

#### CONTACT PERSON FOR MORE

INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat at (202) 634-6748.

Issued: April 7, 1986.

Cynthia C. Matthews,  
Executive Officer.

[FR Doc. 86-8122 Filed 4-8-86; 12:59pm]

BILLING CODE 6750-06-M

### 2

#### FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:30 a.m. on Monday, April 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Mr. John F. Downey, acting in the place of and instead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of two memorandums regarding the

Corporation's leasing or acquisition of office space.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable.

Dated: April 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-8115 Filed 4-8-86; 11:28 am]

BILLING CODE 6714-01-M

### 3

#### FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 11:00 a.m. on Monday, April 7, 1986, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Mr. John F. Downey, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a memorandum regarding the Corporation's assistance agreement with an insured bank.

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4) and (c)(9)(B)).

Dated: April 7, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-8116 Filed 4-8-86; 11:29 am]

BILLING CODE 6714-01-M

### 4

#### FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, April 15, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC

STATUS: This meeting will be closed to the public.

#### ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Tuesday, April 17, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

#### MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings  
Correction and Approval of Minutes  
Draft AO 1986-8

Jan W. Baran, on behalf of James D. Santini

Draft AO 1986-11

Ronald T. Butler, Mueller for Congress  
Petition for rulemaking filed by Common Cause on "Soft Money"; Notice of disposition

Routine Administrative Matters

#### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 86-8155 Filed 4-8-86; 3:41 pm]

BILLING CODE 6715-01-M

### 5

#### NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

AGENCY: Institute of Museum Services.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the functions of the Board. Notice of this meeting is required under the Government in the Sunshine Act (Pub. L. 94-409) and regulations of the Institute of Museum Services, 45 CFR 1180.84.

TIME AND DATE: 9:00 a.m., May 9, 1986.

STATUS: Open and Closed.

ADDRESS: The Nancy Hanks Center, Old Post Office Pavillion, Room 114, 1100 Pennsylvania Avenue, NW., Washington, DC.



**FOR FURTHER INFORMATION CONTACT:**

Mr. Robin N. Rapp, Executive Assistant to the National Museum Services Board, Room 510, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786-0536.

**SUPPLEMENTARY INFORMATION:**

The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Pub. L. 94-462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under this Title. Grants are awarded by the Institute of Museum Services after review by the Board.

The meeting of May 9, 1986 will be open to the public from 9:00 a.m. through discussion of agenda item number V. The meeting will be closed to the public for a review of agenda item number VI pursuant to paragraphs 6, 9(B), and other relevant provisions of subsection (c) of Section 552 of Title 5, United States Code because the Board will consider information that may disclose: Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of privacy; and information the disclosure of which might significantly impede implementation of proposed agency actions related to the grant award process.

**National Museum Services Board***May 9, 1986 Meeting Agenda*

- I. Approval of Minutes of February 28, 1986 Meeting
- II. Director's Report
- III. Legislative and Regulatory Update
- IV. Other Business
- V. Program Report
  - A. Museum Assessment Program
  - B. Conservation Support Program
  - C. General Operating Support Program
- VI. Closed Session

Dated: April 7, 1986.

Lois Burke Shepard,

Director.

[FR Doc. 86-8156 Filed 4-8-86; 3:49 pm]

BILLING CODE 7036-01-M







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Thursday  
April 10, 1986

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**Part II**

**Department of the  
Interior**

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**Fish and Wildlife Service**

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**50 CFR 17 Endangered and Threatened  
Wildlife and Plants; Florida Scrub Plants,  
*Lysimachia asperulaefolia* (rough-leaved  
loosestrife), *Banara vanderbiltii* (Palo de  
Ramon), *Peperomia wheeleri*, *Geocarpon*  
minimum; Five Proposed Rules**



## DEPARTMENT OF THE INTERIOR

## 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Proposed Endangered or Threatened Status for Seven Florida Scrub Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes endangered status pursuant to the Endangered Species Act of 1973 (Act), as amended for the following six plants: *Chionanthus pygmaeus* (pygmy fringe tree), *Eryngium cuneifolium* (snakeroot), *Hypericum cumulicola* (Highlands scrub hypericum), *Polygonella basiramia* (wireweed), *Prunus geniculata* (scrub plum), and *Warea carteri* (Carter's mustard). The Service proposes threatened status for one plant, *Paronychia chartacea* (papery whitlow-wort). Critical habitat is not proposed. These seven species are restricted to sand pine-evergreen oak scrub vegetation in south-central peninsular Florida. All known populations of these plants are on private property, highway rights-of-way, or State park land. These species are endangered or threatened primarily by development of their scrub habitat for agricultural and residential purposes. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for these plants. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by June 9, 1986. Public hearing requests must be received by May 27, 1986.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

**SUPPLEMENTARY INFORMATION:****Background**

Scrub vegetation (locally referred to as scrub) consisting of sand pine (*Pinus clausa*) with shrubby evergreen oaks is restricted to Florida, where it is widespread, and the Gulf coast of Alabama. Southeastern Georgia has evergreen oak scrub without sand pine

(Wharton 1978). The major evergreen scrub oaks are myrtle oak (*Quercus myrtifolia*), Chapman oak (*Quercus chapmanii*) and sand live oak (*Quercus geminata*). Scrub vegetation is found along the Florida coasts and on the sand ridges of the interior of the Florida peninsula. Scrub is one of the most distinctive natural communities of Florida, both on the coasts and inland. Scrub often occupies ancient sand dunes (White 1958), but it also occupies sand soils similar to those with longleaf pine (*Pinus palustris*)—turkey oak (*Quercus laevis*)—wiregrass (*Aristida* spp.) vegetation. Scrub is the primary or only habitat where a number of plants and animals exist. These animals include the Florida scrub jay (*Aphelocoma coerulescens coerulescens*), the Florida scrub lizard (*Sceloporus woodi*), blue-tailed mole skink (*Eumeces egregius lividus*), and the sand skink (*Neoseps reynoldsi*). These four animals are candidates for Federal listing under the provisions of the Act. The following endemic plants of Florida scrub vegetation are already listed, or proposed for listing under provisions of the Act: *Chrysopsis floridana*, *Dicerandra cornutissima*, *Dicerandra frutescens*, *Dicerandra immaculata*, and *Asimina tetramera*. Other scrub plants are candidates for listing, including *Polygonella macrophylla* in the Panhandle, *Liatris ohlingerae* in Polk and Highlands Counties, and *Polygonella myriophylla* and *Lupinus aridorum* in Lake, Orange, and Polk Counties.

The southernmost interior scrubs are on the Lake Wales Ridge in Polk and Highlands Counties, an area that includes the cities of Lake Wales, Avon Park, Frostproof, Sebring, and Lake Placid, and extends south as far as the small town of Venus. The Scrub vegetation of these counties is distinctive for having relatively little sand pine (Abrahamson *et al.* 1984), and for its rich endemic flora (Ward 1979b, Judd and Hall 1984), including the very abundant *Quercus inopina* (inopina oak), a shrubby evergreen oak. Other endemic shrubs include *Chionanthus pygmaeus*, *Prunus geniculata*, and the apparently extinct *Ziziphus celata* (Judd and Hall 1984). The other endemic scrub plants are perennial or annual herbs. Highlands County has more scrub endemics than Polk, but in both counties, the scrub vegetation is varied, and some scrubs have more endemic species present than others. In Highlands County, some scrub sites have four or five of the endemic plants from the present proposal, while others have none (Stout 1982).

Sand pine scrub burns infrequently, roughly every 30–80 years, but fires in scrub can be intense. Most of the shrubs renew themselves from root sprouts, similar to the shrubs in Southeastern pocosins (evergreen shrub bogs) or California chaparral. Sand pine and rosemary (*Ceratiola ericoides*) reoccupy burned scrub only by seed. Rosemary seedlings typically appear 3 years after a fire (Abrahamson *et al.* 1984); mature rosemary approaches senescence at an age of 30–35 years (Johnson 1982), and rosemary is thus characteristic of early vegetation development in scrub. It and some other scrub plants release toxic chemicals into the soil that inhibit or prevent the growth of most other plants, resulting in areas of relatively bare, open sand between the shrubs. A few annual and perennial herbs tolerate the toxic chemicals and inhabit the otherwise bare sand. These include the following species from the present proposal: *Eryngium cuneifolium*, *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella basiramia*, and *Warea carteri*. *Liatris ohlingerae* and *Calamintha ashei*, also candidates for Federal listing, are also typical of such habitats. The bare sand areas diminish as rosemary dies out, so these herbs, like rosemary, are characteristic of early vegetation development in scrub, and are often absent from later stages. The bare sand areas are ephemeral habitats, created by fire or brush removal and maintained by toxic chemicals; without fire or brush removal, they disappear after 20–30 years (Richardson 1985). The herbs that inhabit the open sand can form large populations, but these populations will die out unless the habitat is renewed.

There are four biological preserves and one Federal installation containing scrub in the southern Lake Wales Ridge: Tiger Creek Preserve southwest of Lake Weohyakapka and Lake Arbuckle Preserve east of Frostproof, both of which belong to The Nature Conservancy (Polk County); the U.S. Air Force's Avon Park Bombing Range (Polk County), which contains small tracts of sand pine scrub vegetation but has none of the plant species treated in the present proposal (Wunderlin *et al.* 1982); Highlands Hammock State Park (Highlands County); and the privately owned Archbold Biological Station south of Lake Placid (Highlands County). Archbold has been thoroughly studied and is the richest of the preserves in terms of endemic plant species, although the vegetation patterns found there are not necessarily typical of the entire Lake Wales Ridge. A recent description of the vegetation of



Archbold (Abrahamson *et al.* 1984) distinguishes two kinds of sand pine scrub. The first, with an understory of myrtle oak and scrub hickory (*Carya floridana*), is primarily located on the slopes of a hill, occupying 143 hectares (353 acres). The scrub mint *Dicerandra frutescens* (already federally listed as endangered) is found here. The second, with an understory of rosemary, is located on several patches of dry sand no larger than 1 hectare (2.5 acres) and totals 36 hectares (89 acres), surrounded by scrubby flatwoods (a vegetation of inopina oak with occasional sand pine or slash pine trees), flatwoods, and flatwoods ponds. Rosemary scrub is the home of a number of endemics, including *Eryngium cuneifolium*, *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella basiramia*, and *Warea carteri* (which also occupies scrubby flatwoods and flatwoods).

#### Discussion of the Seven Species Proposed Herein for Listing Follows

*Chionanthus pygmaeus* (pygmy fringe tree) was first collected by G.V. Nash in 1894 near Eustis, Lake County, Florida. It was later collected and described by John K. Small in 1924 from "ancient sand-dunes between Avon Park and Sebring" in Highlands County (Small 1924). This taxon is recognized as a species, spelled either *Chionanthus pygmaeus* (Hardin 1974), or *Chionanthus pygmaea* (Small 1924, Wunderlin 1982). It may represent a subspecies of *Chionanthus virginicus*, the common fringe tree (Robert Currie, U.S. Fish and Wildlife Service, pers. comm., 1985). It is a shrub of the olive family (Oleaceae). The plant is typically less than 1 meter tall (3 feet), with the stems often rising from branches buried by blowing sand, but may reach 2-4 meters (6-13 feet). The leaves are deciduous, opposite, and entire-margined. The flowers appear in late March and are borne in showy panicles. The corolla lobes (fused petals) are four in number, linear, white, and roughly 1 centimeter long (0.4 inch), as opposed to 2-3 centimeters (0.8-1.2 inch) long in *Chionanthus virginicus*. The fruits are purple drupes 2.0-2.5 centimeters (0.8-1.0 inch) long versus 1.0-1.5 centimeters (0.4-0.6 inch) long in *Chionanthus virginicus* (Ward and Godfrey 1979, Wunderlin 1982, Wunderlin *et al.* 1980a). *Chionanthus pygmaeus* is endemic to sand pine scrub vegetation. It is known from west of Lake Apopka, Lake County; northwestern Osceola County; and the Lake Wales Ridge in Polk and Highlands Counties, including Highlands Hammock State Park according to the Florida Natural Areas Inventory (Florida Department of Natural Resources). A

reported population of *Chionanthus pygmaeus* in Hillsborough County appears to have been *Chionanthus virginicus*, but has been extirpated (Robert Currie, U.S. Fish and Wildlife Service, pers. comm., 1985). *Chionanthus pygmaeus* may be present at Fort Cooper State Park south of Inverness, Citrus County (Florida Natural Areas Inventory), but this record has not been verified.

*Eryngium cuneifolium* (snakeroot) was first collected in 1927 near Sebring, Highlands County, by John K. Small, who subsequently described the plant as a new species (Small 1933). Bell (1963) maintained the plant as a distinct species. *Eryngium cuneifolium* is a member of the parsley family (Apiaceae or Umbelliferae). It is an erect perennial herb with a long, woody taproot and usually several erect, branching stems, 0.2-0.5 meter (0.6-1.5 feet), rarely to 0.9 meter (3 feet), tall. The leaves are clustered at the base of the plant. The basal leaves are long-stalked and shaped like narrow wedges, with 3-5 bristle-tipped teeth at the apex. Stem leaves are smaller and lack leaf stalks. The flowers are small, greenish-white when first opening, turning powder blue. The flowers and bristly bracts form small heads 4-8 millimeters (0.15-0.3 inches) in diameter. The fruit is turban-shaped, scaly, and 1.5-2.0 millimeters (0.06-0.08 inch) long. The plants flower from August to October. *Eryngium cuneifolium* is most similar to *Eryngium aromaticum* (Wunderlin *et al.* 1981b). The known populations of *Eryngium cuneifolium* are in an area about 16 kilometers (10 miles) long, from the west side of Lake Placid southward near Venus. Outlying populations occur in Collier and Putnam Counties (Johnson 1981).

*Hypericum cumulicola* (Highlands scrub hypericum) was described by John K. Small (1924) from specimens collected on the Lake Wales Ridge between Avon Park and Sebring. Small created a new genus for this plant, *Sanidophyllum*. Subsequently, Adams (1962) transferred *Sanidophyllum* to *Hypericum*, a genus with many species in the Southeastern Coastal Plain. It is a member of the St. John's-wort family (Guttiferae or Clusiaceae). *Hypericum cumulicola* is a wiry herbaceous to slightly woody perennial about 0.6 meter (2 feet) tall. Several erect stems, branched near their tops, grow from a taproot. New shoots form in September and overwinter. The stems bear widely-spaced pairs of small, needlelike leaves 0.5 centimeter (0.2 inch) long. The small, numerous flowers are arranged in the upper forks and towards the tips of the stems. Each

flower has five separate, obovate, bright yellow petals. The petals are asymmetrical, like the blades of a window fan. The stamens are numerous. A red to brown capsule produces many minute seeds. Flowering and fruiting occur from June through early November (Judd 1980). *Hypericum cumulicola* shares patches of sunny, relatively barren sand within the scrub with *Cladonia* lichens (reindeer moss) and with other endemic herbs especially *Eryngium cuneifolium*. *Hypericum cumulicola* benefits from fire in its environment (Johnson 1981). The plant is endemic to the sand pine-evergreen oak scrub and rosemary scrub vegetation in the southern portion of the Lake Wales Ridge. The plant occurs in Highlands and Polk Counties, Florida, from Frostproof and The Nature Conservancy's Lake Arbuckle tract south to Venus, where it occurs at the Archbold Biological Station (Judd 1980).

*Paronychia chartacea* (papery whitlow-wort), a member of the pink family (Caryophyllaceae), was first collected by John K. Small, who found it in the scrub between Avon Park and Sebring. Small created a new genus to accommodate the plant, which he named *Nyachia pulvinata* (Small 1925). Subsequent workers transferred this species into the large genus *Paronychia*; the name *Paronychia pulvinata*, however, was preoccupied, and Fernald (1936) renamed the plant *Paronychia chartacea*. Since then, Ward (1977) has recognized *P. chartacea* as one of the seven species of *Paronychia* in Florida. It is an annual plant, 3-10 centimeters (1-4 inches) tall forming bright green low round mats of many branches radiating from a taproot. The stems fork repeatedly from the base. Leaves are opposite, scalelike, rarely longer than 3 millimeters (0.12 inch). The small, white, numerous flowers are solitary or in clusters of 3. They have 5 sepals, each less than 1 millimeter long (0.04 inch), and no petals (Kral 1983, Wunderlin *et al.* 1981a). Flowering is in summer (Wunderlin 1982). *Paronychia chartacea* is one of the less conspicuous scrub plants, but it is rarely easily distinguished from other members of its genus by its mat-forming habit, scalelike leaves, and tiny flowers. It is endemic to the interior scrub in Lake County (where it is known from only one specimen and its current status there is unknown), in at least two sites in Orange County, and in Polk and Highlands Counties, where it is present in substantial numbers at Archbold Biological Station (Wunderlin *et al.* 1981a). The plant occurs at The Nature Conservancy's Arbuckle Lake preserve according to the Florida



Natural Areas Inventory. It is found only on bare sand in scrub vegetation, nearly always with inopina oak and rosemary (Stout 1912). *Paronychia chartacea* benefits from limited disturbance that creates bare sand, and it can form large local populations. However, the plant does not persist in areas that are converted to citrus groves or homes.

*Polygonella basiramia* (wireweed), a member of the buckwheat family (Polygonaceae), was first collected east of Lake Josephine in Highlands County by John K. Small in 1920 and 1921. Small (1924) named the plant *Delopyrum basiramia*. Horton (1963) included *Delopyrum* in the genus *Polygonella* and made *Delopyrum basiramia* a variety of *Polygonella ciliata*, a species from the Tampa Bay area and of the Florida east coast from Brevard County southward. Horton examined only four mature plants of *Polygonella ciliata* var. *basiramia*. Nesom and Bates (1984), working with more specimens, concluded that var. *basiramia* deserved recognition as a full species, and published the name *Polygonella basiramia*. The plant is a taprooted annual with its stems branched at or slightly below ground level, forming a cluster of 7 to more than 30 erect, slender branches of nearly equal height (Nesom and Bates 1984). The stems are up to 0.8 meter (2.5 feet) tall; the hairlike leaves are no more than 2 centimeters (0.8 inch) long. Branches of the main stems are tipped by short clusters of small white flowers. The plant blooms in the fall and fruits in late fall and winter (Wunderlin *et al.* 1980b), and is conspicuous only when in bloom. *Polygonella basiramia* is endemic to sand pine scrub on the southern Lake Wales Ridge in Polk and Highlands Counties, Florida. Its geographic range extends from the northwest side of Crooked Lake, five miles south of Lake Wales and from the west side of Lake Weohyakapka south to the southern end of the Ridge, east of Archbold Biological Station (Stout 1981, Johnson 1982). *Polygonella basiramia* grows on areas of bare sand within sand pine and rosemary scrub (Johnson 1981, Stout 1982).

*Prunus geniculata* (scrub plum) was named by Roland Harper in 1911 from plants he found in the high sandy hills of Lake County, Florida, just west of Lake Apopka. It is a member of the rose family (Rosaceae). *Prunus geniculata* is a scraggly, heavily branched shrub up to 2 meters (6 feet) tall. The twigs are strongly zigzag, with spiny lateral branches. The deciduous leaves have stipules and fine teeth. The white flowers are five-petaled, about 1.0-1.3

centimeters (0.4-0.6 inch) in diameter. The fruit is a bitter, dull reddish plum, 1.2-2.5 centimeters (0.4-1.0 inch) long (Kral 1983). Flowering is in winter (Wunderlin 1982). Scrub plum is native to two areas in central Florida: (1) Lake County between Lake Apopka and Clermont, where the plum occurred in longleaf pine-turkey oak vegetation; and (2) Polk and Highlands Counties from the vicinity of Lake Wales and Lake Weohyakapka south to highway 27 near Venus (Johnson 1981; Stout 1982), where the plants occurred in sand pine-evergreen oak scrub on the Lake Wales Ridge. It is not known from any protected areas. The plum is often found on roadcuts and fire lanes, which indicates that it benefits from moderate disturbance that removes other shrubs.

*Warea carteri* (Carter's mustard) was named by John K. Small in 1903 from a specimen collected near Miami in 1903. The plant is an unbranched annual 0.2-1.0 meters (0.6-3.0 feet) tall with simple, alternate leaves up to 1 centimeter (0.4 inch) long, gradually diminishing in size upward on the stem, becoming small bracts toward the top of the stem. The stem is topped by a raceme of white, four-petaled flowers. The fruits are seed pods 4-6 centimeters (1.6-2.4 inches) long, mounted on slender stalks up to 1.5 centimeter (0.6 inch) long (Kral 1983). The plant is a member of the mustard family (Cruciferae or Brassicaceae), but *Warea* is of taxonomic interest because it resembles *Cleome* and *Polanisia* of the caper family (Capparidaceae). Over a dozen herbarium collections of *Warea carteri* were made in Dade County from 1878 to 1934, mostly from rock pinelands, but also from scrub. Careful searches have failed to relocate this plant in the remaining fragments of Dade County pineland and it appears to have been extirpated (Nauman 1980). From 1922 to 1967, *Warea carteri* was collected from scrub in Polk and Highlands Counties (Nauman 1980). The plant has also been reported from Liberty County, Florida (a possible misidentification), and from Brevard County (Kral 1983). Currently, despite recent floristic inventories by Johnson (1981), Stout (1982), and by Gary Schultz for the Florida Natural Areas Inventory in 1983, *Warea carteri* is known only from a small area at the Archbold Biological Station, in scrub, Scrubby flatwoods, and flatwoods, where it is associated with *Ceratiola ericoides*, *Calamintha ashei*, *Eryngium cuneifolium*, *Hypericum cumulicola*, and *Paronychia chartacea*.

Federal Government actions on these plants began as a result of Section 12 of the Endangered Species Act of 1973,

which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In the report, *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella ciliata* var. *basiramia*, *Prunus geniculata*, and *Warea carteri* were listed as endangered; *Chionanthus pygmaeus* and *Eryngium cuneifolium* were listed as threatened. On July 1, 1975 (40 FR 27823), the Service published a notice in the *Federal Register* of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) [now section 4(b)(3)] of the Act, and of its intention thereby to review the status of the plant taxa named within. The above seven taxa were included in the notice. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, *Federal Register* publication. *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella ciliata* var. *basiramia*, and *Prunus geniculata* were included in the proposed rule. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, *Federal Register* publication, which also determined 13 plant species to be endangered or threatened (43 FR 17909). On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had expired, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980, the Service published a revised notice of review of native plants in the *Federal Register* (45 FR 82480); *Chionanthus pygmaeus*, *Eryngium cuneifolium*, *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella ciliata* var. *basiramia*, *Prunus geniculata*, and *Warea carteri* were included as category-1 species (species for which data in the Service's possession indicate listing is warranted). On November 28, 1983, the Service published in the *Federal Register* (48 FR 53640) a supplement to the 1980 notice of review. This supplement treated *Paronychia chartacea* as a category-2 species (species for which data in the Service's



possession indicate listing is probably appropriate, but for which additional biological information is needed to support a proposed rule). Subsequent field work by Gary Schultz for the Florida Natural Areas Inventory supports the proposal of *Paronychia chartacea* as a threatened species. The proposal to list the six other species as endangered is based on the extensive field work that has been carried out since the Smithsonian Institution report of 1975 by Schultz and others (Johnson 1981, Judd 1980, Nauman 1980, Stout 1982, Wunderlin et al. 1980a, Wunderlin et al. 1980b, and Wunderlin et al. 1981b). All seven species were included in category 1 in the September 27, 1985, revised notice of review of plants (50 FR 39526).

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for all seven of the interior scrub plants because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, October 12, 1984, and October 13, 1985, the Service found that the petitioned listing of these seven species was warranted, and that, although pending proposals had precluded their proposal, expeditious progress was being made to list other species. Publication of the present proposal constitutes the next 1-year finding required on or before October 13, 1986.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chionanthus pygmaeus* Small (pygmy fringe tree); *Eryngium cuneifolium* Small (snakeroot); *Hypericum cumulicola* (Small) P. Adams (= *Sanidophyllum cumulicola* Small) (Highlands scrub hypericum); *Paronychia chartacea* Fernald (= *Nyachia pulvinata* Small) (papery whitlow-wort); *Polygonella basiramia* (Small) Nesom & Bates (= *Delopyrum basiramia* Small, = *Polygonella ciliata* Meisn. var. *basiramia* (Small) Horton) (wireweed);

*Prunus geniculata* Harper (scrub plum); and *Warea carteri* Small (Carter's mustard) are as follows:

A. *The present or threatened destruction, modification, or curtailment of their habitat or range.* All seven of the proposed plants are restricted to sand pine scrub vegetation, except for *Prunus geniculata* and *Chionanthus pygmaeus*, which also occur in longleaf pine-turkey oak vegetation in a limited area west of Lake Apopka in Lake County. Destruction of habitat is the principal threat to the seven species herein proposed for listing.

A large portion of the interior scrub plants' habitat has been converted from sand pine scrub to citrus groves. Lake and Polk Counties are the leading citrus producers in Florida, and Highlands County is an important producer (Fernald 1981). In Lake County, essentially all of the original vegetation that was occupied by pygmy fringe tree and scrub plum has been converted to citrus groves. In Polk and Highlands Counties, many subdivisions laid out from 1952 to 1972 are evident on photorevised topographic maps published by the U.S. Geological Survey. Residential development is concentrated on the Lake Wales Ridge along U.S. Highway 27. The Ridge features well-drained soils, attractive hills, and numerous lakes. In Highlands County, 64.2 percent of the xeric vegetation (scrub, scrubby flatwoods, and southern ridge sandhills) present before settlement was destroyed by 1981. An additional 10.3 percent of the xeric vegetation was moderately disturbed, primarily by building roads to create housing subdivisions (Peroni and Abrahamson 1985). Remaining tracts of scrub in Highlands County are rapidly being developed for citrus groves and housing developments (Fred Lohrer, Archbold Biological Station, pers. comm., 1985). The situation is similar in Polk County. Many of the remaining stands of scrub are vacant lots, patches of land isolated by railroad tracks, or other fragments of the original vegetation that have escaped development. Few large tracts are left. Since not all scrub vegetation, even in Highlands County, contains the endemic plants, the remaining stands of scrub with the endemics are very limited in extent.

*Chionanthus pygmaeus* is known from roughly 20 sites, most apparently consisting of only a few plants (because multiple aboveground shoots grow from buried stems, the number of genetically distinct individuals is unknown). Six sites are on the Lake Wales Ridge in Polk County, nine sites in Highlands

County, and the remaining sites in Lake and Osceola Counties. Only the plants at Highlands Hammock State Park are protected. *Chionanthus pygmaeus* tends to occur with *Prunus geniculata*, but not with the endemic scrub herbs.

*Eryngium cuneifolium* has a very narrow geographic distribution in an area 16 Kilometers (10 miles) long in Highlands County. It occurs at 11 localities in the Placid Lakes subdivision, Archbold Biological Station, and east of Archbold, and at two outlying localities, one at Interlachen in Putnam County, and the other north of Naples in Collier County (Johnson 1981). The small number of localities, combined with this species' requirement for nearly barren sand, renders the plant very vulnerable to further habitat loss. Only the sites at Archbold are protected.

*Hypericum cumulicola* is known historically from 36 sites, 11 of them confirmed in 1983 by the Florida Natural Areas Inventory. This plant occurs at the same sites, and in the same habitat as *Eryngium cuneifolium* in southern Highlands County. All but three sites (Archbold Biological Station and the Lake Arbuckle preserve) are vulnerable to development; many are on vacant lots or small remnant patches of scrub vegetation.

*Polygonella basiramia* shares the same habitat of bare sand as the herbs discussed above. Protected sites exist at Highlands Hammock State Park and Archbold Biological Station, but the total known number of sites is small, only 21.

*Prunus geniculata* is native to two areas in central Florida. One of these areas, in Lake County, has now been converted almost entirely to citrus groves. The other area, in Polk and Highlands Counties, has largely been developed (see "Background" section). Roughly 33 localities have been reported, four of them in Lake County (Johnson 1981, Stout 1982).

*Warea carteri* is presently known from only one population at Archbold Biological Station. Nearly all of its former habitat in Dade County has been destroyed, and the species has not been collected in Highlands or Polk Counties, outside of Archbold, since 1967.

*Paronychia chartacea* has a somewhat larger geographical range than the other species, and is known from 46 sites according to the Florida Natural Areas Inventory. This plant requires scrub habitat with bare sand and the rapid destruction of this habitat threatens this plant.

B. *Overutilization for commercial, recreational, scientific, or educational*



purposes. *Chionanthus pygmaeus* and *Prunus geniculata* are vulnerable to taking due to their horticultural potential as attractive ornamentals; *Chionanthus pygmaeus* is already in cultivation (F. Lohrer, Archbold Biological Station, pers. comm., 1985). The closely related *Chionanthus virginicus* and *Prunus angustifolia* (chickasaw plum) are used as ornamentals. Collecting or vandalism could threaten the other five as well if publicity increases.

C. Disease or predation. Not applicable.

D. The inadequacy of existing regulatory mechanisms. *Chionanthus pygmaeus*, *Hypericum cumulicola*, and *Warea carteri* are listed as endangered under the Preservation of the Native Flora of Florida Law, section 581.185 of the Florida Statutes. The other species in this proposal are not protected by the State law at the present time. The Florida law regulates taking, transport, and the sale of plants, but it does not provide habitat protection. *Chionanthus pygmaeus*, *Hypericum cumulicola*, and *Prunus geniculata* were listed as endangered by the Florida Committee on Rare and Endangered Plants and Animals (Ward 1979a), but this listing confers no protection under the law.

Several of these species are protected where they grow in the privately-owned Archbold Biological Station, in Highlands Hammock State Park, or in the Tiger Creek and Arbuckle Lake preserves owned by The Nature Conservancy. These existing preserves, however, do not contain all of the endemic scrub plants, and may not have sufficient populations of the species herein proposed for listing to ensure their conservation. Listing of these species under the Endangered Species Act would add Federal protection to these species.

E. Other natural or manmade factors affecting their continued existence. The five herbs (*Eryngium cuneifolium*, *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella basiramia*, and *Warea carteri*) are all vulnerable to destruction by off-road vehicles that pass through the open spaces between shrubs. Trampling of the herbs by pedestrians is potentially a problem in areas set aside for scientific or educational use (Judd 1980). Restriction to specialized habitats and small geographic ranges tends to intensify any adverse effects upon the populations of any rare plant. This is certainly true for these seven species of the Florida interior scrub. The herbs also depend on occasional fires (see "Background" section) or equivalent mechanical land disturbance to maintain their bare sand habitats. Conservation of the scrub

ecosystem and its endemic plants requires adequately large areas of natural vegetation and long-term vegetation management, including prescribed fire or brush removal. Archbold Biological Station conducts prescribed burning; similar vegetation management is expected for the Tiger Creek and Arbuckle Lake preserves. The listing of these scrub plants may encourage the development and implementation of prescribed burning plans or other vegetation management.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this action, the preferred alternative is to list *Chionanthus pygmaeus*, *Eryngium cuneifolium*, *Hypericum cumulicola*, *Polygonella basiramia*, *Prunus geniculata*, and *Warea carteri* as endangered species, and to list *Paronychia chartacea* as a threatened species.

*Chionanthus pygmaeus* and *Prunus geniculata* have been extirpated from most of their historic ranges and presently exist in small numbers at few sites; they could become extinct in the near future as removal of scrub vegetation continues. *Warea carteri* has been extirpated from nearly all of its former range; the plant is now restricted to a single locality, where the low number of individuals renders it vulnerable to extinction. *Eryngium cuneifolium*, *Hypericum cumulicola*, and *Polygonella basiramia* have already lost most of their original habitat, and further habitat destruction is continuing rapidly. All of the above herbs are also endangered by vegetation change within their shared habitat. The patches of relatively bare sand occupied by these plants eventually disappear as evergreen scrub oaks encroach (see "Background" section). These six plants are in danger of extinction throughout all or significant portions of their ranges, and therefore fit the Act's definition of endangered.

*Paronychia chartacea* has been extirpated from most of its former range and is threatened by lack of fire or other disturbances that are needed to renew the bare sand it occupies in remaining areas of scrub vegetation. However, this plant has a wider geographic range and is present at more sites than the six plants proposed for endangered status. It is therefore likely to become an endangered species within the foreseeable future rather than being in danger of extinction. Because of this, it fits the definition of a threatened species contained in the Act.

Based on current knowledge, all other alternatives to the proposed listing of these species as endangered or threatened do not adequately reflect the biological facts and therefore have been rejected. Critical habitat is not being proposed for the reasons described in the next section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these seven species at this time. Publication of critical habitat maps in the Federal Register would increase the degree of threat from taking or other human activity. The known sites for these species are primarily on private land with no known Federally funded or Federally authorized activities. The major exception is State-owned highway rights-of-way. All the species herein proposed for listing, except *Warea carteri*, exist along U.S. Highway 27 and/or other roads. These occurrences are always at the edges of tracts of scrub vegetation in private ownership. The proper agencies have been notified of the plants' locations and management needs. *Chionanthus pygmaeus* and *Polygonella basiramia* occur at Highlands Hammock State Park and *Chionanthus pygmaeus* may occur at Fort Cooper State Park. The State of Florida is aware of their locations. No Federal involvement is known at these parks. Designation of critical habitat would provide no further notification benefit. *Chionanthus pygmaeus* and *Prunus geniculata* are desirable as ornamentals, and all seven species are vulnerable to vandalism and unintentional trampling. While collecting is prohibited in the State parks and on Federal lands, these prohibitions are difficult to enforce. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these plants is not prudent at this time, since such designation could be expected to increase the degree of threat from collecting or other human activity.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition,



recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their action with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All presently known sites for the Florida interior scrub endemic plants are on private or State-owned land with no known Federal involvement, with the following exceptions. Populations extending onto State-owned highway rights-of-way may be subject to Federal involvement if the U.S. Department of Transportation (Federal Highway Administration) should provide funds for maintenance or construction. Activities involving Federal mortgage programs, including those of U.S. Department of Agriculture (Farmers Home Administration), Veterans Administration, and the U.S. Department of Housing and Urban Development (FHA loans), may be subject to section 7 review. The supply of electricity to new housing developments may be subject to Federal involvement through the Rural Electrification Administration.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general trade prohibitions and exceptions that apply to all endangered and threatened plant species. With respect to the seven Florida scrub plants, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale these species in interstate or foreign commerce. Seeds for cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.62, 17.63, or 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and threatened species under certain circumstances. It is anticipated that few trade permits would be sought or issued for the seven plants, with the exception of *Chionanthus pygmaeus*, which is already in cultivation (F. Lohrer, Archbold Biological Station, pers. comm., 1985), and may be used as an ornamental.

Section 9(a)(2)(B) of the Act, as amended in 1982, and implementing regulations, prohibit the removal and reduction to possession of listed plant species from areas under Federal jurisdiction. This prohibition would apply to *Chionanthus pygmaeus*, *Eryngium cuneifolium*, *Hypericum cumulicola*, *Polygonella basiramia*, *Prunus geniculata*, *Paronychia chartacea*, and *Warea carteri*. Permits for exceptions to these prohibitions are available through regulations published September 30, 1985 (50 FR 39681; to be codified at 50 CFR 17.62). Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903 or FTS 235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other

interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Chionanthus pygmaeus*, *Eryngium cuneifolium*, *Hypericum cumulicola*, *Paronychia chartacea*, *Polygonella basiramia*, *Prunus geniculata*, or *Warea carteri*;
- (2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

- (3) Additional information concerning the range and distribution of these species; and

- (4) Current or planned activities in the ranges and habitats of these species and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

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## Author

The primary author of this proposed rule is David L. Martin, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

## List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

## Proposed Regulations Promulgation

### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*



Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apiaceae—Parsley family:						
<i>Eryngium cuneifolium</i> .....	Snakeroot .....	U.S.A. (FL) .....	E .....	.....	NA	NA
Brassicaceae—Mustard family:						
<i>Warea carteri</i> .....	Carter's mustard .....	U.S.A. (FL) .....	E .....	.....	NA	NA
Caryophyllaceae—Pink family:						
<i>Paronychia chartacea</i> (- <i>Nyachia pulvinata</i> ) .....	Papery whitlow-wort .....	U.S.A. (FL) .....	T .....	.....	NA	NA
Hypericaceae—St. John's-Wort family:						
<i>Hypericum cumulicola</i> .....	Highlands scrub hypericum .....	U.S.A. (FL) .....	E .....	.....	NA	NA
Oleaceae—Olive family:						
<i>Chionanthus pygmaeus</i> .....	Pygmy fringe tree .....	U.S.A. (FL) .....	E .....	.....	NA	NA
Polygonaceae—Buckwheat family:						
<i>Polygonella basiramia</i> (- <i>Polygonella ciliata</i> var. <i>basiramia</i> ) .....	Wireweed .....	U.S.A. (FL) .....	E .....	.....	NA	NA
Rosaceae—Rose family:						
<i>Prunus geniculata</i> .....	Scrub plum .....	U.S.A. (FL) .....	E .....	.....	NA	NA

Dated: March 2, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7928 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M

## 50 CFR Part 17

### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Lysimachia asperulaefolia*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to list *Lysimachia asperulaefolia* (rough-leaved loosestrife), a perennial herb limited to nine populations in North Carolina, as an endangered species under the authority of the Endangered Species Act (Act) of 1973, as amended. *Lysimachia asperulaefolia* is endangered by suppression of fire, drainage activities associated with silviculture and agriculture, and residential and industrial development. This proposal, if made final, would implement Federal protection provided by the Act for *Lysimachia asperulaefolia*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by June 9, 1986. Public hearing requests must be received by May 27, 1986.

**ADDRESS:** Comments and materials concerning this proposal should be sent to Mr. Warran T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville,

North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Ms. Nora Murdock at the above address (704/259-0321 or FTS 672-0321).

#### SUPPLEMENTARY INFORMATION:

##### Background

The taxonomic history of *Lysimachia asperulaefolia* (rough-leaved loosestrife) was summarized and clarified by Ray (1956) as follows: *Lysimachia asperulaefolia* was described as a new species by Jean Louis Marie Poiret in 1814. The material upon which he based this description was collected in North Carolina, but was mistakenly attributed to an Egyptian collection. In 1817, Stephen Elliott published a description of conspecific material collected by Herbemont near Columbia, South Carolina, naming it *Lysimachia herbemonti*. The only other synonym for this species was *Trydina herbemonti*, used by E.G. Steudel in his 1841 edition of *Nomenclator botanicus*.

The slender stems of this perennial herb grow from a rhizome and reach heights of 3 to 6 decimeters (1 to 2 feet). Whorls, usually of three to four leaves, encircle the stem at intervals beneath the showy yellow flowers. Flowering occurs from mid-May through June, with fruits present from July through October (Kral 1983; Radford *et al.* 1978). *Lysimachia asperulaefolia* is easily distinguished from the one other similar southeastern species of *Lysimachia*, *Lysimachia loomisii* Torrey, by its broader, glandular leaves and much larger flowers (Kral 1983).

*Lysimachia asperulaefolia* is a species endemic to the coastal plain and sandhills of North and South Carolina. It currently is known from nine locations in North Carolina and is believed extirpated from South Carolina. This species generally occurs in the ecotones or edges between longleaf pine uplands and pond pine pocosins [areas of dense shrub and vine growth usually on a wet, peaty, poorly drained soil (Barry 1980)], on moist to seasonally saturated sands and on shallow organic soils overlying sand. The plant has also been found to occur on deep peat in the low shrub community of large Carolina bays [shallow, elliptical, poorly drained depressions of unknown origin (Mathews *et al.* 1980)]. The grass-shrub ecotone, where *Lysimachia asperulaefolia* is found, is fire-maintained, as are the adjacent plant communities (longleaf pine-scrub oak, savannah, flatwoods, and pocosin). Suppression of naturally occurring fire in these ecotones results in shrubs increasing in density and height and expanding to eliminate the open edges required by *Lysimachia asperulaefolia*. Drainage of these moist depressions in preparation for silvicultural or agricultural activities has also contributed to the decline of the species. Fire suppression, drainage, and, to a lesser extent, residential and industrial development have altered and eliminated habitat for this species and continue to be the most significant threats to the species' continued existence (Carter 1985; Kral 1983).

Although intensive searches have been conducted in numerous areas of suitable habitat, a total of only 19 populations of *Lysimachia asperulaefolia* have been reported in



North and South Carolina. Nine of these (all in North Carolina) remain in existence. The following is a summary of the most current information for this species:

**South Carolina:** According to Rayner (1985), *Lysimachia asperulaefolia* was collected at Columbia, Richland County, around 1817. Extensive development has occurred in this area and neither the habitat nor the species can now be found. Another site was recorded for the species in 1857 near Society Hill, Darlington County. At this location, the habitat currently remains essentially intact, but has not been allowed to burn for many years. Although these locations and other areas of suitable habitat were searched extensively by Rayner in 1984 and 1985, *Lysimachia asperulaefolia* was not found (Rayner 1985).

**North Carolina:** *Lysimachia asperulaefolia* has been reported from 17 sites in North Carolina. The species has been extirpated at eight of these localities. Three populations in Brunswick County, and one population each in Pender, Cumberland, Beaufort, Pamlico, and Onslow Counties, have succumbed to drainage associated with agricultural and silvicultural activities and residential development, as well as fire suppression (Carter 1985; J. Moore, North Carolina Natural Heritage Program, personal communication, 1985). A late-1800's record, from near Statesville in Iredell County, is now believed to have been a misidentification (R. Sutter, North Carolina Plant Protection Program, personal communication, 1985; J. Moore, personal communication, 1985). The distribution of the nine extant populations by county is as follows:

Two populations occur in Carteret County. One population occurs on U.S. Forest Service land. In 1983, a 200-acre tract of the Croatan National Forest, including part of this population of *Lysimachia asperulaefolia*, was designated for a county landfill site. The plants, which existed on the edge of the proposed landfill, were removed from the area. The other colony in this population has experienced a 40 percent decline in numbers of stems since 1980, as a result of silvicultural site preparation, including ditching and drainage (J. Moore, personal communication, 1985; Carter 1985). The second population is on land administered by the U.S. Forest Service, and partly in private ownership. The privately owned portion of this population is on land that is currently for sale and being considered for municipal development (J. Moore,

personal communication, 1985). The entire population is potentially threatened by drainage and other intensive timber management activities, as well as by development.

Two populations occur in Scotland County. Both of these populations are located on land owned by the U.S. Department of Defense that is leased to and managed by the North Carolina Wildlife Resource Commission as part of the Sandhills Game Lands. The first population consists of two very small colonies, covering a total area of less than 10 square meters (12 square yards). The plants here are rapidly being eliminated by shrub encroachment due to fire exclusion; conversion of uplands to pine plantation is also a threat at this site (Carter 1985). The second population is relatively large, but fire suppression has resulted in shrub encroachment; plants here are feeble and not reproducing well (Carter 1985).

Another population is located on the border of Cumberland and Bladen Counties. The population consists of two small colonies which cover a combined total area of less than 6 square meters (7.2 square yards). One colony is owned by the North Carolina Department of Natural Resources and Community Development, while the other is on land that is privately owned and currently for sale. The entire population is endangered by fire suppression (Carter 1985; F. Annand, North Carolina Nature Conservancy, personal communications, 1985).

Two populations occur in Brunswick County. One population exists on land owned by The Nature Conservancy. It is being actively managed with prescribed fire, and is one of the most vigorous populations. However, intensive studies conducted on this population indicate that there is a high turnover in individual stems from year to year for reasons that are currently unknown (Sutter, personal communication, 1985). The second population is located on land owned by the U.S. Department of Defense, Sunny Point Military Ocean Terminal. This population has benefited from a recently begun program of prescribed burning. However, drainage and conversion of pocosins to pine plantation is currently ongoing in other areas of the terminal, and could eventually threaten the species here (Carter 1985).

One population occurs in Pender County on land owned in part by the North Carolina Wildlife Resources Commission and The Nature Conservancy. One private owner retains a small portion of this tract. This population is very small in terms of

numbers and area covered, and is in serious need of fire. The remaining plants are feeble and not reproducing well due to severe shrub encroachment (Carter 1985; F. Annand, personal communication, 1985).

The ninth population is located in Hoke County on land owned by the U.S. Department of Defense, Fort Bragg Military Reservation. This population is relatively vigorous (Carter 1985); however, it is endangered by fire suppression or long-rotation burning (greater than three years), timber harvesting activities, and possibly mechanized military training activities.

On December 15, 1980, the Service published a revised notice of review for native plants in the *Federal Register* (45 FR 82480); *Lysimachia asperulaefolia* was included in that notice as a category-1 species. Category-1 species are those for which the Service presently has sufficient information on hand to support the biological appropriateness of their being listed as endangered or threatened species. A revision on the 1980 notice that maintained *Lysimachia asperulaefolia* in category 1 was published on September 27, 1985 (50 FR 39526).

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lysimachia asperulaefolia* Poir. (Rough-leaved loosestrife) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** *Lysimachia asperulaefolia* has been and continues to be endangered by destruction or adverse alteration of its habitat. Since discovery of the species, over 50 percent of the known populations have been extirpated largely due to drainage and conversion of the habitat for silvicultural and agricultural purposes. Residential and industrial development has eliminated some habitat directly, and altered water regimes in adjacent areas to the point where the species can no longer survive. Fire suppression is a serious problem for this species and will be discussed in detail under factor "E" below. Of the ten populations that have been extirpated, four were eliminated by drainage and subsequent conversion to



pine plantation or other intensive silvicultural practices, three disappeared due to fire suppression, two were eliminated by residential or industrial development, and one was lost when the area was drained and converted to agricultural use. At least seven of the remaining nine populations are currently threatened by habitat alteration. In addition to the major threats listed above, those populations on military installations are potentially threatened by mechanized military training activities. Although this has not been a documented problem for this species thus far, some of the small, fragile pocosins could easily be destroyed by heavy, tracked vehicles such as tanks. Nonetheless, populations probably persist on military bases, where they have not survived on adjacent privately owned land, because of the Defense Department's prescribed burning programs and periodic fires that are incidental to military training (J. Carter, North Carolina State University, personal communication, 1985). Activities associated with intensive timber management on publicly owned land, such as timber harvesting, road building, and drainage, if done in a manner not consistent with the protection of *Lysimachia asperulaefolia* populations, could adversely affect the species, as has been the case on private lands in the past.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** *Lysimachia asperulaefolia* is not currently a significant component of the commercial trade in native plants; however, with its showy flowers, the species has potential for horticultural use, and publicity could generate an increased demand.

**C. Disease or predation.** Not applicable to this species at this time.

**D. The inadequacy of existing regulatory mechanisms.** *Lysimachia asperulaefolia* is afforded legal protection in North Carolina by North Carolina General Statutes, §§ 106-202.12 to 106-202.19 (Cum.Supp. 1985), which provides for protection from intrastate trade (without a permit) and for monitoring and management of State-listed species, and prohibits taking of plants without written permission of landowners. *Lysimachia asperulaefolia* is listed in North Carolina as endangered. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat, such as disruption of drainage patterns and water tables, or exclusion of fire. The species is recognized in South Carolina as endangered and of national concern by the South Carolina Advisory

Committee on Rare, Threatened, and Endangered Plants in South Carolina; however, this State offers no official protection. Section 404 of the Federal Water Pollution Control Act (FWPCA) could potentially provide some protection for the habitat of *Lysimachia asperulaefolia*; however, most, if not all, of the sites where it occurs do not meet the wetlands criteria of the FWPCA. The Endangered Species Act would provide additional protection and encouragement of active management for *Lysimachia asperulaefolia*.

**E. Other natural or manmade factors affecting its continued existence.** As mentioned in the "Background" section of this proposed rule, many of the remaining populations are small in numbers of individual stems and in terms of area covered by the plants. In addition, the rhizomatous nature of the species indicates that there are many fewer individual plants in existence than stem counts would indicate, with as many as 50 or more stems arising from a single rhizome or plant (R. Sutter, personal communication, 1985). There is low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. In addition, intensive studies have revealed that there is a high turnover in individual stems from year to year; for instance, of 50 individuals marked in 1983 and subsequently monitored, only 8 remained by 1985 (R. Sutter, personal communication, 1985). Although the species seems to have high seed viability and good seed set, in 1985 less than 3 percent of the plants in all populations flowered (Carter 1985; R. Sutter, personal communication, 1985; J. Moore, personal communication, 1985; Moloney 1985). Much remains unknown about the demographics and reproductive requirements of this species. Fire is essential to maintaining the grass-scrub ecotone where *Lysimachia asperulaefolia* occurs. Without periodic fire, this ecotone is gradually overtaken and eliminated by the shrubs of the adjacent pocosins. As the shrubs increase in height and density, they overtop the *Lysimachia asperulaefolia*, which is shade-intolerant. The current distribution of this species is ample evidence of its dependence on fire. Of the nine remaining populations, seven are completely on publicly owned lands, or lands owned by The Nature Conservancy, that are actively managed with prescribed fire or exposed to naturally occurring periodic fires. The two sites which are partially in private ownership are either exposed to

periodic fire or adjacent to areas which are regularly burned. Populations in areas which have not been recently burned tend to be feeble and reproduce poorly.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Lysimachia asperulaefolia* as endangered. With more than 50 percent of the species' populations having already been eliminated, and only nine remaining in existence, it definitely warrants protection under the Act. Endangered status seems appropriate because of the imminent serious threats facing most populations. Critical habitat is not being designated for the reasons discussed below.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Lysimachia asperulaefolia* at this time. With its showy flowers, the species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in collecting pressures on the species. Although removal and reduction to possession of endangered plants from lands under Federal jurisdiction are prohibited by the Endangered Species Act, such provisions are difficult to enforce. Publication of critical habitat descriptions would make *Lysimachia asperulaefolia* more vulnerable and would increase enforcement problems for the U.S. Forest Service and the Department of Defense. The populations on private lands would be vulnerable to collection. Increased visits to population locations stimulated by critical habitat designation could therefore adversely affect the species. The Federal and State agencies and landowners involved in managing the habitat of this species have been informed of the plants' locations and of the importance of protection.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition,



recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The U.S. Forest Service and the U.S. Department of Defense have jurisdiction over portions of this species' habitat. Federal activities that could impact *Lysimachia asperulaefolia* and its habitat in the future include, but are not limited to, the following: silvicultural activities, including timber harvesting and conversion of sites to pine plantations by means of drainage and mechanical site preparation; mechanized military training operations; recreational development; drainage alterations; road construction; permits for mineral exploration; and implementation of timber harvest portions of forest management plans. The Service will work with the involved agencies to secure protection and proper management of the *Lysimachia asperulaefolia* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Lysimachia asperulaefolia*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Lysimachia asperulaefolia* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition would apply to *Lysimachia asperulaefolia*. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681; to be codified at 50 CFR 17.62). It is anticipated that few, if any, permits will be requested for collecting *Lysimachia asperulaefolia* from Federal lands. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lysimachia asperulaefolia*;
- (2) the location of any additional populations of *Lysimachia asperulaefolia* and the reasons why any habitat should or should not be

determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Lysimachia asperulaefolia*.

Final promulgation of the regulation on *Lysimachia asperulaefolia* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Asheville Endangered Species Field Station (see the "Addresses" section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

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#### Author

The primary author of this proposed rule is Ms. Nora Murdock, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family *Primulaceae*, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
PRIMULACEAE—Primrose family:						
<i>Lysimachia asperulaefolia</i>	Rough-leaved loosestrife	U.S.A. (NC, SC)	E		NA	NA

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7932 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Banara vanderbiltii*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Service proposes to determine *Banara vanderbiltii* (Palo de Ramon) to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Banara vanderbiltii* is endemic to semievergreen forests of the karst region of northern Puerto Rico, where a single population of six plants survives. The species is endangered by deforestation for limestone quarrying and yam cultivation. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act of *Banara vanderbiltii*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by June 9, 1986. Public hearing requests must be received by May 27, 1986.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field

Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, at this office during normal business hours, and at the Service's Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Densmore at the Caribbean Field Office address (809/851-3637) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/221-3583 or FTS 242-3583).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Banara vanderbiltii* was discovered by Amos Arthur Heller in 1899, and named in honor of Cornelius Vanderbilt, who financed his collections in Puerto Rico. The first specimens were collected at Catano and Martin Pena, near the present metropolitan area of San Juan, but the species has not been found at these locations since that time. *Banara vanderbiltii* was not collected again until the 1950's, when two trees were found in the limestone hills west of Bayamon. These trees were subsequently destroyed when the area was cleared to plant yams, and the species was thought to be extinct. However, further investigation of the same general area yielded five young plants (Vivaldi and Woodbury 1981). More recently, a sixth plant was found at this site.

*Banara vanderbiltii* is an evergreen shrub or small tree reaching 30 feet (10 meters) in height and 5 inches (12

centimeters) in diameter. The leaves are arranged alternately in a single plane, have a dentate margin, and are densely pubescent on both sides. The species is restricted to a single locality in the semievergreen forests of the limestone karst region of northern Puerto Rico, between Vega Baja and Bayamon. Expansion of human habitation in the San Juan area has been responsible for the destruction of other known populations, and the sole remaining population is threatened by continued development of adjacent areas. Nothing is known of the species' regenerative capacity; thus it is not clear whether the existing population is capable of maintaining or increasing its size.

*Banara vanderbiltii* was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilippis 1978). In August 1979, the Service contracted with Dr. Jose L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of plants considered to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey recommended that *Banara vanderbiltii* be proposed for listing as an endangered species. *Banara vanderbiltii* was included among the plants being considered as endangered or threatened species by the Fish and Wildlife Service, as published in the Federal Register (45 FR 82479) dated December 15, 1980, as a Category-1\* species (those species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or



threatened species; asterisks indicate the possible extinction of a species). The asterisk was dropped and *Banara vanderbiltii* was maintained in Category 1 in the 1983 update (November 28, 1983; 48 FR 53640) of the 1980 notice and in the 1985 revised notice (September 27, 1985; 50 FR 39526).

In a notice published in the *Federal Register* on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found on October 13, 1983, October 13, 1984, and October 13, 1985, that listing *Banara vanderbiltii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes the next required finding in accordance with Section 4(b)(3)(B)(iii) of the Act.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Banara vanderbiltii* Urban (Palo de Ramon) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** Modification of habitat or direct destruction of plants through deforestation appear to be the most serious threats to *Banara vanderbiltii*. The species has been extirpated by deforestation from all but one of the sites where it has been known to exist. The remaining plants occupy a site of less than 165 square feet (16 square meters) in extent inside a stand of remnant forest, and are less than 660 feet (200 meters) from a major highway. Further clearing, modification of the forest edge, or encroachment by exotic plant species could lead to reduced survivorship or extinction of *Banara vanderbiltii*.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** Taking for these purposes has not been a documented factor in the decline of this species, but could become so in the future. The species occurs near inhabited areas, and could be removed or destroyed incidentally or deliberately.

**C. Disease or predation.** Disease and predation have not been documented as factors in the decline of this species.

**D. The inadequacy of existing regulatory mechanisms.** The Commonwealth of Puerto Rico does not have specific legislation or rules to protect endangered or threatened plant species, although a list of vulnerable species exists.

**E. Other natural or manmade factors affecting its continued existence.** *Banara vanderbiltii* is known to occur only as a single small, compact population. The species' restriction to specialized habitat, small geographically limited range, and population size of only 6 plants intensifies any adverse effects upon the population or habitat of this plant. The species' regenerative requirements are unknown. The fruits of this species were only recently discovered by Service personnel, and the frequency or viability of fruit and seed production are unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Banara vanderbiltii* as endangered. Since there are few individuals remaining and a continuing risk of damage to the plant and/or its habitat, endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under threat factor "B" above, *Banara vanderbiltii* may be threatened by collecting, an activity regulated by the Endangered Species Act with respect to plants only on lands under Federal jurisdiction. Publication of a critical habitat location would increase the risk of taking or vandalism. The small size of the population exacerbates this risk. Thus, determination of critical habitat for *Banara vanderbiltii* would not be prudent at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or

threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for *Banara vanderbiltii*, as discussed above, and Federal involvement is possible only where habitat or plants may be affected by actions of the Federal Highway Administration. In the event that the highway in the immediate vicinity of this population is widened or realigned, proper protection and management planning will be needed to protect *Banara vanderbiltii*. Designers and work crews would need to be alerted so that the plants are considered and the habitat of *Banara vanderbiltii* left unchanged.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species.



With respect to *Banara vanderbiltii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is unknown in cultivation and is uncommon in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available. It is likely that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby

solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Banara vanderbiltii*;
- (2) The location of any additional populations of *Banara vanderbiltii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Banara vanderbiltii*.

Final promulgation of the regulation on *Banara vanderbiltii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Ayensu, E.S., and R.A. DeFilippis. 1978. *Endangered and Threatened Plants of the United States*. Smithsonian Institution and World Wildlife Fund, Washington, D.C. xv + 403 pp.
- Vivaldi, J.L., and R.O. Woodbury. 1981. Status report on *Banara vanderbiltii* Urban. Unpublished status report submitted to the U.S. Fish and Wildlife Service, Mayaguez, P.R. 35 pp.

#### Author

The primary author of this proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622 (809/851-3637).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

##### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Flacourtiaceae, to the List of Endangered and Threatened Plants:

##### § 17.12 Endangered and threatened plants.

.....  
(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Flacourtiaceae—Flacourtiaceae family: <i>Banara vanderbiltii</i>	Palo de Ramon	U.S.A. (PR)	E		NA	NA

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7931 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

##### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Peperomia wheeleri*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to

determine *Peperomia wheeleri* to be an endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. Critical habitat is not proposed. *Peperomia wheeleri* is endemic to seasonal semievergreen open forests on granodiorite boulders along the north coast of Culebra Island, Puerto Rico. The species is endangered



by destruction of its habitat through deforestation and the activities of feral and domestic animals. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Peperomia wheeleri*. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by June 9, 1986. Public hearing requests must be received by May 27, 1986.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Densmore at the Caribbean Field Office address (809/834-4440) or Mr. Richard P. Ingram at the Atlanta Regional Office address (404/221-3583 or FTS 242-3583).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Peperomia wheeleri* was discovered by Britton and Wheeler during their visit to Culebra Island in 1906. The plants were taken alive to the New York Botanical Garden and the species described from living material. The type specimen was collected from plants at the Garden. The species was not collected again until 1980 (Vivaldi and Woodbury, 1981).

*Peperomia wheeleri* is an evergreen, hairless, fleshy herb reaching 3 feet (1 meter) in height, with clusters of minute flowers in spikes 4-6 inches (10-15 centimeters) long. The species is restricted to the large granodiorite boulders found on the north slopes of Monte Resaca within the Municipality of Culebra, Puerto Rico. Although the boulder substrate extends over much of the north side of Culebra Island, deforestation and grazing have eliminated or substantially altered the original vegetation. Within the remaining forested areas, foraging by escaped domestic fowl has destroyed or threatens to destroy the humus overlying the boulders, thus altering the microhabitat required by *Peperomia wheeleri*. The remaining populations of this species are located almost entirely within the 375 acre (152 hectare) Monte Resaca Unit of the Culebra National Wildlife Refuge. The number of

surviving individuals is difficult to estimate, and nothing is known about the species' regeneration or population dynamics.

*Peperomia wheeleri* was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps, 1978). In August 1979, the Service contracted with Dr. Jose L. Vivaldi, a resident botanist of Puerto Rico, to conduct a status survey of plants considered to be candidates for listing as endangered or threatened in Puerto Rico and the Virgin Islands. Reports and documentation resulting from this survey recommended that *Peperomia wheeleri* be proposed for listing as an endangered species. *Peperomia wheeleri* was included in the Service's most recent (September 27, 1985) comprehensive notice of review of plants under consideration for Federal listing. *Peperomia wheeleri* was included in Category 1 in the notice, which comprises taxa for which the Service has substantial information indicating they should be proposed for endangered or threatened status. *Peperomia wheeleri* had previously been included in the Service's December 15, 1980, notice (45 FR 82479) as a Category-1 species.

In a notice published in the Federal Register on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found on October 13, 1983, and again on October 13, 1984, and October 13, 1985, that listing *Peperomia wheeleri* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. This proposed rule indicates that the petitioned action is warranted, and constitutes the next required finding in accordance with section 4(b)(3)(B)(ii) of the Act.

##### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 224) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Peperomia wheeleri* Britton (Wheeler's peperomia) are as follows:

A. The present or threatened destruction, modification, or curtailment

of its habitat or range. Modification and destruction of habitat appear to be the most serious threats to *Peperomia wheeleri*. The species' habitat on Culebra Island has been largely modified or destroyed through deforestation, grazing by cattle and goats, and foraging by domestic fowl, thus eliminating the species throughout most of its former range. Few plants exist outside the boundaries of the Monte Resaca Unit of the Culebra National Wildlife Refuge, where measures are being taken to exclude livestock. However, until this work is complete, and a management plan developed to protect *Peperomia wheeleri*, some additional losses of habitat and individuals are likely. Further deforestation within the Refuge is not expected to occur, although such activities along the Refuge boundaries could cause additional losses by altering the structure and microclimate of the forest edge.

B. Overutilization for commercial, recreational, scientific, or educational purposes. *Peperomia wheeleri* is restricted to a very small area (375 acres) and taking or vandalism could severely threaten this single locality if they were to occur. Increased publicity regarding the location of this plant could increase the chance of taking and/or vandalism occurring.

C. Disease or predation. Disease and predation have not been documented as factors in the decline of this species, although it is likely that some grazing or browsing of plants has occurred. Destruction of *Peperomia wheeleri* habitat by grazing was discussed above in Factor "A."

D. The inadequacy of existing regulatory mechanisms. The Commonwealth of Puerto Rico does not have specific legislation or rules to protect endangered or threatened plant species, although a list of vulnerable species exists. All plants existing on National Wildlife Refuges are protected from collecting (50 CFR 27.51); the population of *Peperomia wheeleri* on Culebra National Wildlife Refuge is protected by this prohibition, to the extent that it is enforceable.

E. Other natural or manmade factors affecting its continued existence. There is insufficient information on the regenerative capacity of *Peperomia wheeleri* to determine whether the present populations will be maintained. The species' habitat requirements are poorly understood, although it appears that maintenance of the forest canopy and humus layer is a minimal requirement.



The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Peperomia wheeleri* as an endangered species. Since there are relatively few individuals remaining and a continuing risk of damage to the plant and/or its habitat, endangered status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The populations of *Peperomia wheeleri* are sufficiently restricted (375 acres) that unauthorized collecting or vandalism could significantly affect their numbers. Publication of critical habitat descriptions and maps in the Federal Register would increase the likelihood of such activities. The populations of *Peperomia wheeleri* are located on a National Wildlife Refuge and refuge personnel will be informed of the plant's locations and its management needs. No other public notification benefits would accrue from designating critical habitat. Therefore, there is no net benefit in designation of critical habitat for this species.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions

against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. *Peperomia wheeleri* occurs primarily on land under the jurisdiction of the U.S. Fish and Wildlife Service. Management of the Culebra National Wildlife Refuge includes fencing to exclude livestock. Additional measures to remove domestic animals from Refuge lands and to monitor populations of *Peperomia wheeleri* may be desirable.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Peperomia wheeleri*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since the species is virtually unknown in cultivation and is uncommon in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal

and reduction to possession of endangered plant species from areas under Federal jurisdiction. The prohibition will apply to *Peperomia wheeleri* on Federal lands. Permits for exceptions to this prohibition are available. It is likely that few collecting permits for this species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Peperomia wheeleri*;

(2) The location of any additional populations of *Peperomia wheeleri* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Peperomia wheeleri*.

Final promulgation of the regulation on *Peperomia wheeleri* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act 1969, need not be prepared in



connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### Literature Cited

- Ayensu, E.S., and R.A. DeFilipps. 1978. *Endangered and Threatened Plants of the United States*. Smithsonian Institution and World Wildlife Fund, Washington, D.C. XV + 403 pp.
- Vivaldi, J.L., and R.O. Woodbury. 1981. Status report of *Peperomia wheeleri* Britton. Status report submitted to the U.S. Fish and Wildlife Service, Mayagüez, P.R. 30 pp.

#### Author

The primary author of this proposed rule is Mr. David Densmore, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 3005-Marina Station, Mayagüez, Puerto Rico 00709-3005 (809/834-4440).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter

I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Piperaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Piperaceae—Pepper family:						
<i>Peperomia wheeleri</i>	Wheeler's peperomia	U.S.A. (PR)	E		NA	NA

Dated: February 28, 1986.

P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7930 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants; Threatened Status Proposed for *Geocarpon Minimum*

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine a plant, *Geocarpon minimum*, to be a threatened species under the authority contained in the Endangered Species Act (Act) of 1973, as amended. *Geocarpon minimum* is only known from three sites in southeastern Arkansas (three counties) and thirteen sites in southwestern Missouri (six counties). However, of these 16 sites, only four Missouri sites and one Arkansas site contain vigorous populations. This species is threatened by its limited distribution and by habitat destruction or modification from grazing by cattle, off-road vehicle (ORV) use, and forestry practices. This proposed rule, if made final, will extend the Act's protection to *Geocarpon minimum*. The Service seeks data and comments from the public on this proposed rule.

**DATES:** Comments from all interested parties must be received by June 9, 1986. Public hearing requests must be received by May 27, 1986.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Endangered Species Field Station, U.S. Fish and Wildlife Service, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis B. Jordan (see "ADDRESSES" section) at 601/960-4900 or FTS 490-4900.

#### SUPPLEMENTARY INFORMATION:

##### Background

*Geocarpon minimum* is a small, succulent annual ranging from 1 to 4 centimeters (0.4-1.6 inches) in height. The stems, which may be simple or branched near the base, extend from a slender tap root. Leaves are opposite, sessile, joined at base, 3 to 4 centimeters (1.2-1.6 inches) long, and narrowly oblong in shape. The flowers, which are inconspicuous in the leaf axils, are apetalous, and have a greenish-red calyx. The fruit, a capsule, dehisces into three parts at maturity, releasing numerous seeds measuring 0.5 millimeters (0.02 inch) long. Young plants are dull gray and turn reddish-purple at maturity. The species is

ephemeral, usually completing its life cycle within a four week period (Morgan 1980, Karl 1983, Tucker 1983).

*Geocarpon minimum*, a monotypic genus, was first collected in 1913 by E.J. Palmer in Jasper County, Missouri. MacKenzie (1914) described this new taxon and placed it in the family Aizoaceae. Palmer and Steyermark (1950) later transferred the genus to the Caryophyllaceae family based on the following characters: staminodal rudiments, apetalous flowers, lack of stipules, gamophyllous calyx, 5 perigynous stamens, 1-celled ovary, and free-central placentation. Chemotaxonomic studies on *Geocarpon* by Bogle *et al.* (1971) revealed the presence of anthocyanins, which provided further support to its placement in the Caryophyllaceae family.

*Geocarpon* was known only from the type locality until 1957 when it was discovered in St. Clair County, Missouri, by Steyermark (1958). The following year, three additional populations were found; two in Missouri (Steyermark *et al.* 1959) and one in Arkansas (Moore 1958). Since that time, extensive field surveys of suitable habitat by Steyermark *et al.* (1959), Retting (1983), Tucker (1983), S. Orzell (Arkansas Natural Heritage Commission, pers. comm., 1985) and S. Morgan (Missouri Department of Conservation, pers. comm., 1985) have resulted in the location of only 13 populations in Missouri and three in Arkansas.



In Missouri, *Geocarpon* grows on moist, sandy soils on exposed sandstone outcrops which are primarily of the Channel sands formation (Morgan 1980). Arkansas sites are characterized as sandy-clay prairies occurring in otherwise savanna type areas. In these areas, *Geocarpon* occurs on bare mineral soils of the Lefe Series (high in sodium and magnesium) which may represent relict Pleistocene Lake beds (Tucker 1983, Kral 1983). Species diversity is low in these communities. Common associates include *Houstonia minima*, *Nothoscordum bivalve*, *Plantago hybrida*, *Plantago elongata*, *Krigia occidentalis*, *Krigia virginica*, and *Oenothera linifolia* (Morgan 1980, Tucker 1983, Kral 1983). Sites in Arkansas are also characterized by prominent blue-green alga colonies (Tucker 1983).

*Geocarpon* has not been observed at the type locality since 1949 and is believed extirpated from this site (Morgan, pers. comm., 1985). Currently, populations are known at 13 sites in Missouri; including five in Dade County, two each in Polk, St. Clair, and Cedar Counties, and one each in Lawrence and Greene Counties. However, only four of these 13 sites support vigorous populations (Morgan, pers. comm., 1985). Three populations of *Geocarpon* are known in Arkansas, a large one at Warren Prairie in parts of Bradley and Drew Counties (Warren Prairie), and two small depauperate populations in Cleveland County (Kingsley Prairie). The Warren Prairie site contains the largest population of *Geocarpon*, with plants occurring locally in parts of five contiguous sections (Tucker 1983). Population structure consists of solitary individuals or small groups within these communities. Morgan (1980) reports that in Missouri the colonies range in size from 1 to 6 square meters (1.2-7.2 square yards) while Tucker (1983) states the largest colonies do not exceed 1 square meter in Arkansas. The majority of the sites are on privately-owned lands; four sites are located on public lands. Those on public land include two areas administered by the U.S. Army Corps of Engineers, one by the State of Missouri (Missouri Department of Conservation) and a portion of one site by the State of Arkansas (Arkansas Natural Heritage Commission). Many of these sites continue to be damaged by grazing and off-road vehicles (ORVs), thereby threatening the continued existence of *Geocarpon*.

Federal Government actions on this species began with Section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the

Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3)(A) of the Act), and of its intention thereby to review the status of the plant taxa named therein. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to Section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Geocarpon minimum* was included in the Smithsonian petition and the June 16, 1976, proposal, as amended. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the June 16, 1976, proposal along with four other proposals that had expired. On December 15, 1980, the Service published a revised notice of review for native plants in the **Federal Register** (45 FR 82480); *Geocarpon minimum* was included in that notice as a category-1 species. *Geocarpon minimum* was maintained in category 1 in the Service's updated plant notice of September 27, 1985 (50 FR 39526). Category 1 comprises taxa for which the Service presently has substantial biological information to support their being proposed to be listed as endangered or threatened species.

Section 4(b)(3) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Geocarpon minimum* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service found that

the petitioned listing of *Geocarpon minimum* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to add species to the list. Publication of this proposal constitutes the Service's findings under section 4(b)(3)(B)(II) of the Act that the petitioned listing of *G. minimum* is warranted.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Geocarpon minimum* Mackenzie are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Geocarpon minimum* is restricted to southwestern Missouri and southeastern Arkansas (see "Background" section for number of populations). The major threat to *Geocarpon* is the destruction or adverse modification of its habitat. Many of the sites in Missouri have been damaged from trampling and grazing by cattle (Morgan, pers. comm., 1985). The extirpation of the population at the type locality is perhaps attributable to such grazing pressures, as the area is now a fenced pasture. The habitat of *Geocarpon* continues to be damaged by ORVs, and this problem is amplified by the easy access to many of the sites from adjacent roads (Tucker 1983). Suitable habitat for *Geocarpon* is limited, and most such areas have been heavily disturbed. In southern Arkansas many of the areas have been adversely modified by silvicultural practices (Tucker 1983, S. Orzell, pers. comm., 1985). Populations in close proximity to roads are further threatened by future road expansions and improvements. Even though habitat is of low agricultural quality, some areas have been cultivated in the past or are presently in pasture (Kral 1983). *Geocarpon* appears to require some type of natural disturbance to maintain bare substrate for seedling establishment (Tucker 1983). Research on the biology of this species is needed before proper management plans can be developed.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Taking for these purposes poses a risk to *Geocarpon minimum* due



to the ease of access to the sites and its desirability due to its taxonomic uniqueness (*Geocarpon* is a monotypic genus; genus contains only one species).

C. *Disease or predation.* *Geocarpon* is not known to be threatened by disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* *Geocarpon* is considered endangered by the Missouri Department of Conservation and the Arkansas Natural Heritage Commission; however, it is afforded legal protection only in Missouri. Missouri legislation prevents commercial exploitation of rare and endangered plants without a permit. However, the Missouri law does not provide protection against habitat loss, the major threat to *Geocarpon*. Of the four publicly owned sites, three are designated as Natural Areas (NA) and are thereby afforded protection. The Arkansas Natural Heritage Commission owns and manages the Warren Prairie NA (300 acres, 125 hectares) in Bradley County, which contains a portion of the largest known population of *Geocarpon*; however, no protection is provided for the plants and their habitat outside the NA in adjacent Drew County. The other two NAs are in Missouri: the Bona Glade NA (Dade County), owned by the U.S. Army Corps of Engineers and supporting a large, healthy population; and the Taberville Prairie NA (St. Clair County), owned and managed by the Missouri Department of Conservation, but a less suitable site with a smaller population. At these areas, collecting is prohibited except for scientific or educational purposes under permit, but these regulations are difficult to enforce. The Act would enhance the existing protection through Section 7 (interagency cooperation) and Section 9, which prohibits removal and reduction to possession from Federal lands and restricts interstate commercial activity.

E. *Other natural or manmade factors affecting its continued existence.* *Geocarpon* is vulnerable due to the small amount of available habitat, its limited range, and low numbers at many of the sites. Furthermore, the species is susceptible to inadvertent destruction because of its diminutive size, ephemeral nature, and localized distribution. As with all annuals, population size may fluctuate from year to year due to variable reproductive success. For example, *Geocarpon* does not germinate every year, a condition perhaps related to moisture availability (Morgan 1980, Tucker 1983). Successful germination from a seed bank can reestablish populations following reproductive failure; however, local extirpation is likely in areas as

populations decrease in size. *Geocarpon* is a pioneer species that tolerates little competition from other species. Overcrowding and shading by invading plants with succession pose insidious threats to this species (Tucker 1983).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Geocarpon minimum* as threatened. Threatened status seems appropriate since two populations and a portion of a third population are located in designated Natural Areas and are thus protected. Critical habitat is not being determined for reasons discussed in the following section.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Geocarpon minimum* at this time. The involved State agencies and the U.S. Army Corps of Engineers are aware of the locations for this species. Publication of exact locations of *Geocarpon* would increase public interest and possibly lead to additional threats for the species from collecting and vandalism. The sites where *Geocarpon* occurs are easily accessible. *Geocarpon* is a monotypic genus and may be desired for plant collections or for study. No benefit can be identified through critical habitat designation that would outweigh these potential threats. Therefore, it would not be prudent or beneficial to determine critical habitat for *Geocarpon minimum* at this time.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the

prohibitions against collection are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990, June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Two populations of *Geocarpon minimum* occur on lands under jurisdiction of the U.S. Army Corps of Engineers (Dade County, Missouri); however, one site is designated a Missouri Natural Area and thus is protected. Future activities involving development near the other site could affect *Geocarpon* but no such activities are known at this time. Currently, no activities to be authorized, funded, or carried out by Federal agencies are known to exist that would affect *Geocarpon*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Geocarpon minimum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50



CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. It is anticipated that few trade permits would be sought or issued since *Geocarpon minimum* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This protection applies to *Geocarpon minimum* by regulation. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681; to be codified at 50 CFR 17.62). It is anticipated that few collecting permits will be requested for taking *Geocarpon minimum*. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Geocarpon minimum*;

(2) The location of any additional populations of *Geocarpon minimum* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Geocarpon minimum*.

Final promulgation of the regulation on *Geocarpon minimum* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Endangered Species Field Supervisor (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Tucker, G.E. 1983. Status report on *Geocarpon minimum* MacKenzie. Provided under contract to the U.S. Fish and Wildlife Service, Southeast Region, Atlanta, Georgia. 41 pp.

#### Author

The primary author of this proposed rule is Ms. Cary Norquist, Endangered Species Field Station, U.S. Fish and Wildlife Service, 300 Woodrow Wilson Avenue, Suite 316, Jackson, Mississippi 39213 (601/960-4900 or FTS 490-4900).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Caryophyllaceae, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
CARYOPHYLLACEAE—Pink family						
<i>Geocarpon minimum</i>	None	U.S.A. (AR, MO)	T		NA	NA

Dated: March 2, 1986.

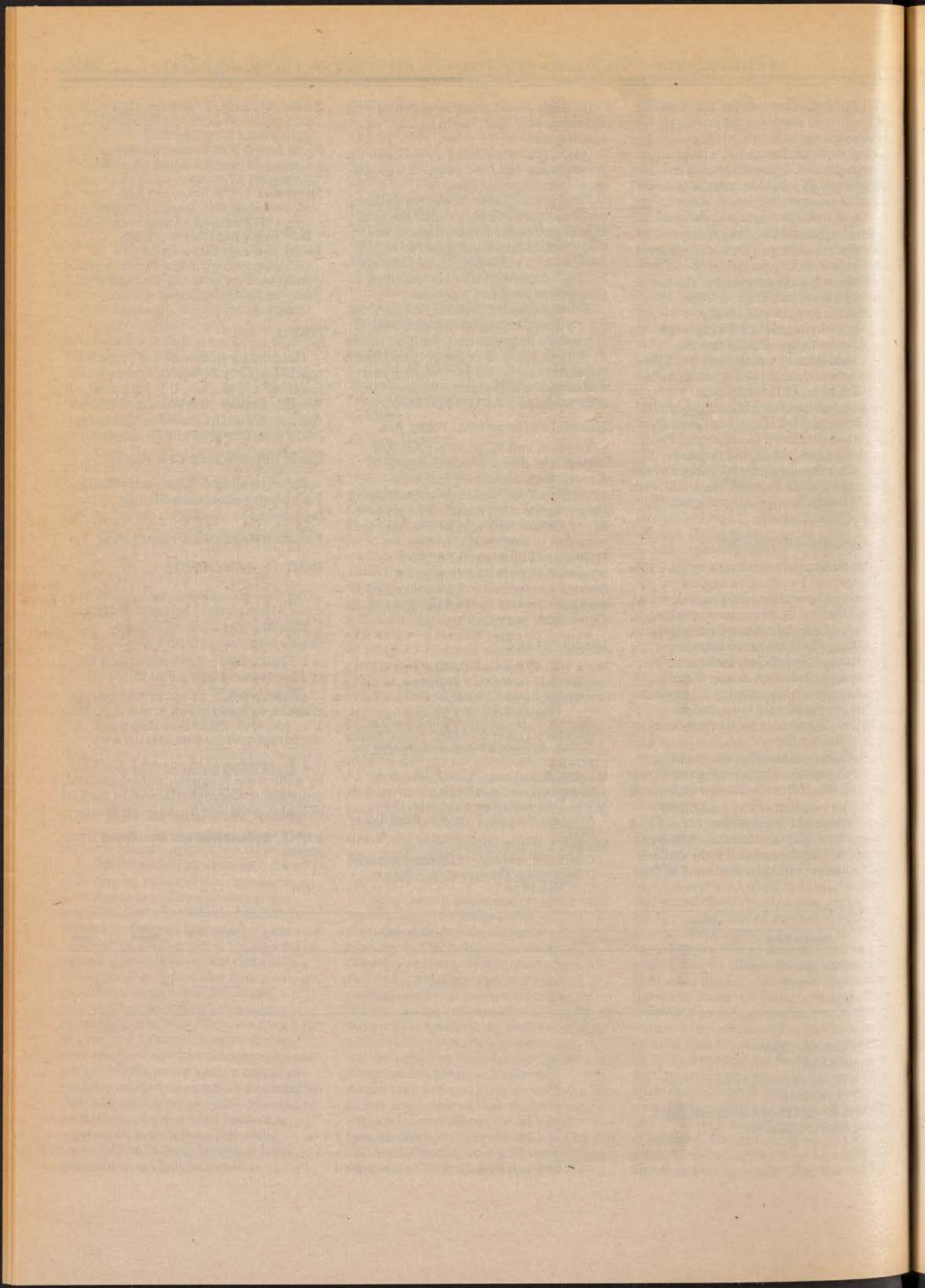
P. Daniel Smith,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 86-7929 Filed 4-9-86; 8:45 am]

BILLING CODE 4310-55-M







# Final Report

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Thursday  
April 10, 1986

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## Part III

### Department of Energy

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Compliance With the National  
Environmental Policy Act; Record of  
Decision for Remedial Actions at the  
Former Vanadium Corporation of America  
Uranium Mill Site, Durango, CO; Notice



## DEPARTMENT OF ENERGY

**Compliance With the National Environmental Policy Act; Record of Decision for Remedial Actions at the Former Vanadium Corporation of America Uranium Mill Site, Durango, CO**

**AGENCY:** Department of Energy.

**ACTION:** Decision to relocate the residual radioactive materials from the former Vanadium Corporation of America uranium mill site for longterm stabilization and control at the Bodo Canyon Site, southwest of Durango, Colorado.

**SUMMARY:** Pursuant to the Council on Environmental Quality Regulations (40 CFR Part 1505) implementing the procedural provisions of the National Environmental Policy Act (NEPA) and the Department of Energy's (DOE) guidelines for compliance with NEPA (45 FR 20694, March 28, 1980), the Office of Assistant Secretary for Nuclear Energy of the DOE is issuing a Record of Decision on Remedial Actions at the former Vanadium Corporation of America uranium mill site at Durango, Colorado.

**Background**

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95-604, was enacted in order to address an express Congressional finding that uranium mill tailings located at inactive processing sites may pose a potential health hazard to the public. On November 8, 1979, the DOE designated 24 inactive processing sites for remedial action under Title I of UMTRCA, including the former Vanadium Corporation of America site in Durango, Colorado (44 FR 74892).

UMTRCA charges the Environmental Protection Agency (EPA) with the responsibility for promulgating remedial action standards for inactive mill sites. The purpose of these standards is to protect the public health and safety and the environment from radiological and non-radiological hazards associated with residual radioactive materials at the sites. The final standards (40 CFR Part 192) were promulgated with an effective date of March 7, 1983. The DOE has selected and will execute a plan of remedial action that will satisfy the EPA standards.

All remedial actions must be selected and performed with the concurrence of the Nuclear Regulatory Commission (NRC).

Under UMTRCA, the DOE and the State of Colorado entered into a cooperative agreement effective October

19, 1981, for remedial action at the former Vanadium Corporation of America site and at eight other inactive uranium mill sites in Colorado. Under this cooperative agreement, the State must concur with the remedial action plan to be developed for the relocation to the Bodo Canyon site, the state must acquire the Bodo Canyon site, and the DOE and the state will cost-share the remedial action. Under the cost-sharing provisions, the DOE will pay 90 percent and the state 10 percent of the site acquisition, engineering, and construction costs.

**Project Description**

The former Vanadium Corporation of America site is a 126-acre property located on the southwest edge of the city of Durango, La Plata County, in southwest Colorado. The site is owned by Hecla Mining Company of Wallace, Idaho.

In general, the site is bordered on the east by the Animas River near the tailings piles and by U.S. Highways 160 and 550 near the raffinate ponds area, on the north by Lightner Creek, and on the southwest by Smelter Mountain.

The former mill was built in 1942, on the site of an old lead smelter, by the United States Vanadium Corporation, a corporation established by the Federal Government for the purchase of strategic materials needed during World War II. In 1943, the United States Vanadium Corporation began reprocessing vanadium tailings for the recovery of uranium for sale to the Federal Government and operated the mill until 1946 when the mill was shut down. In 1949, the Vanadium Corporation of America leased, and subsequently purchased the site. The Vanadium Corporation of America operated the mill and sold uranium to the U.S. Atomic Energy Commission until March, 1963, when the mill was shut down permanently. The site was purchased by Ranchers Exploration and Development Corporation in 1977, which was subsequently acquired by Hecla Mining Company in 1984.

The Durango site includes two tailings piles against the side of Smelter Mountain. The larger pile contains about 1,230,000 tons of tailings, covers 14 acres, and is about 230 feet high. The smaller pile contains about 325,000 tons of tailings, covers seven acres, and is about 90 feet high. Other contaminated materials are present on the mill site, ore storage area, and raffinate ponds area. In addition to the on-site contamination, approximately 137 off-site properties in the vicinity may be contaminated by tailings that have been removed from the Durango site.

The selected alternative disposal site is located in Bodo Canyon, on land owned by the State of Colorado approximately 3.5 road miles southwest of the Durango mill site. The Bodo Canyon disposal site is within the Bodo State Wildlife Area which is managed by the Colorado Division of Wildlife for wildlife and recreational use (e.g., hiking, hunting). Access to the Bodo Canyon site is by County Road 211 (Bodo Canyon Road) and County Road 212. The gently sloping hills contiguous with the site range in elevation from 7035 feet to 7135 feet above sea level.

The purpose of the remedial action is to stabilize and control the residual wastes at the Bodo Canyon site in a manner that complies with EPA standards (40 CFR Part 192) and other applicable Federal, state, and local laws. The principal feature of the selected alternative is the isolation and stabilization of the tailings and other contaminated materials on an approximately 70-acre site in Bodo Canyon.

Transport of the tailings and contaminated materials by truck or conveyor was evaluated as Alternative 3 in the EIS. Either option is environmentally acceptable; however, relocation by conveyor is environmentally preferable. For example, combustion emissions when considered for both the Durango site and the Bodo Canyon site are less for conveyor transport than for truck transport as are wildlife and ecosystems impacts, traffic use of U.S. Highway 550 and County Roads 211/212, estimated occupational injuries, and costs. With few exceptions, impacts to other environmental components are similar.

Although conveyor transport is environmentally preferable, the estimated costs and many estimated impacts are similar and, thus, the mode of tailings transport will be determined by the DOE through the competitive bid process during selection of construction contractor(s).

Selection of contractor(s) will be determined on the basis of cost, technical factors, estimated environmental impacts and other factors.

The Bodo Canyon disposal site will be withdrawn from state lands, the tailings will be acquired, and if necessary, the Durango site will be acquired, from Hecla Mining Company. The materials obtained in the cleanup of vicinity properties will be delivered to the Durango site for later transportation to the Bodo Canyon site for final stabilization.



Construction will begin with site preparation at the Durango and Bodo Canyon sites and may include: (1) Installation of security fences, gates, and signs; (2) clearing of trees and brush; (3) preparation of staging areas; and (4) installation of a storm-water drainage system and retention basins. Following this, haul roads (and the conveyor if selected) will be constructed, buildings and foundations will be demolished, the Bodo Canyon site will be prepared and tailings emplaced, the radon barrier and erosion protection layer placed over the tailings, and the Durango site restored. Additional details are available in section 3.2.4 of the final environmental impact statement (FEIS).

The completed embankment will have an irregular shape. Construction of the embankment will result in a higher surface elevation particularly on the northeast side.

Excavated materials will be used for cover. Additional cover materials will be obtained from borrow sites in the local area. The maximum sideslopes of the embankment will be 5 horizontal to 1 vertical, and the top of the embankment will have slopes that range from 0.5 to 1.0 percent. An unpaved access road from County Road 212 will remain as will the permanent access barrier and monuments.

Part of the excavated area at the Durango site will be backfilled with clean soil to the approximate original ground level, contoured for surface drainage, and restored. The raffinate ponds area, borrow sites, and part of the Durango site will be contoured for surface drainage, and revegetated. Following completion of the remedial action, the Durango site will be available for uses permitted by local land use ordinances.

#### Description of Alternatives

The following alternatives to the selected action were considered in detail by the DOE in reaching its decision to stabilize the residual radioactive wastes at the Bodo Canyon site.

1. *No Action:* This alternative consists of performing no remedial action. Radon exhalation and external gamma radiation at the Durango site would continue to exceed EPA standards on or near the site. Without remedial action, the DOE can not assure that the tailings would not be dispersed by wind, water or humans and cause considerably higher health effects than those that presently exist. Therefore, the no action alternative is unacceptable since UMTRCA directs the DOE to ensure that

the completed remedial action is in compliance with EPA standards.

2. *Stabilization on the Durango Site:* In this alternative, all onsite tailings and other contaminated materials, plus those relocated from the off-site vicinity properties, would be stabilized above grade on a 38-acre area at the north end of the Durango site, which would be acquired from Hecla Mining Company by the State of Colorado. All tailings and other contaminated materials would be recontoured into one smoothly contoured pile against Smelter Mountain. The tailings and other contaminated materials would be covered by a layer of compacted clay that would reduce the release of radon to meet the EPA standards. The surface of the radon barrier would be protected from wind and water erosion by a layer of rock. The final stabilized pile would have a maximum height of about 250 feet, and slopes of 3 horizontal to 1 vertical. The toe of the stabilized pile would be protected from stream-bank erosion and flood waters by placement of a five-foot-thick, grouted riprap erosion barrier along the south bank of Lightner Creek and the west bank of the Animas River. A permanent access barrier would be erected around the 38-acre stabilized site; access to, and use of, the property would be restricted. The remainder of the site would be released for any use consistent with local land-use controls. Finally, ownership of the stabilization area would be transferred from the State of Colorado to the DOE, and the NRC would issue a license for its long-term surveillance and maintenance. This alternative would require a greater level of maintenance because of the potential for meandering of the river, the design's dependence on grouted riprap, and the use of diversion ditches. Additional concept details are available in section 3.2.3 in the FEIS.

3. *Stabilization on the Long Hollow Site:* In this alternative (Alternative 4 in the EIS), all tailings and contaminated materials, including those temporarily stored at the Durango site from cleanup of vicinity properties, would be stabilized in a partially below grade stabilization area in Long Hollow. The Long Hollow site, which would be acquired by the State of Colorado, is located approximately 11 road miles southwest of the Durango site. After materials are excavated, a compacted clay liner would be placed over the underdrain, covering the entire disposal area. The stabilization area would be enclosed by constructing an earthen embankment across the valley. The downstream slope of the embankment would be 5 horizontal to 1 vertical. The contaminated materials would be

covered with clayey soils which in turn would be covered with rock. A permanent access barrier would be erected around the 80-acre tract. The Durango site and areas adjacent to Smelter Mountain would be backfilled and restored to a level compatible with the surrounding terrain. The Durango site would then be released for any use consistent with local land-use controls. Finally, ownership of the disposal area would be transferred from the State of Colorado to the DOE. NRC would issue a license for long-term surveillance and maintenance of the Long Hollow site. Additional concept details are available in section 3.2.5 in the FEIS.

4. *Stabilization on the Long Hollow Site with Reprocessing of the Tailings:* In this alternative (Alternative 5 in the EIS), all of the tailings at the Durango site would be transported to the Long Hollow site over a period of 51 months, and reprocessed by a modified heap leach process to recover most of the uranium and vanadium resources which exist in the tailings. Following reprocessing of the tailings, the other contaminated materials from the Durango site, including those temporarily stored at the Durango site from the cleanup of vicinity properties, would be stabilized in a partially below grade embankment at the Long Hollow site. As in the previous alternative, the State of Colorado would acquire the Long Hollow site. A clay and synthetic liner system would be constructed to prevent the leakage of leach solutions, and a ground-water interceptor trench would be constructed on the northwest side of the site to provide an avenue for the movement of shallow ground water away from the site.

Following the completion of reprocessing operations, the lesser contaminated soils and other materials would be transported to the Long Hollow site and used to fill in the retention ponds. All of the contaminated material at Long Hollow would then be contoured into a gently sloping embankment and covered with compacted clayey soils and rock to protect the site from erosion. The entire process for reprocessing and stabilizing the tailings would require 82 months to complete. A permanent access barrier would be erected around the site, and the Durango site and the excavated areas adjacent to Smelter Mountain would be backfilled and recontoured to a level compatible with the surrounding terrain. The Durango site would then be released for any use consistent with local land-use controls. Finally, ownership of the 195-acre site would be transferred from the State of Colorado.



to the DOE. The NRC would issue a license for long-term surveillance and maintenance at the Long Hollow site. Additional concept details are available in section 3.2.6 in the FEIS.

Additional remedial action alternatives were identified, but eliminated from further detailed study because they do not represent reasonable alternatives (see section 3.2.7 of the FEIS).

#### Comments on the Final EIS

Comments on the FEIS were received from the EPA, Colorado Department of Health, Colorado Division of Wildlife, Durango Uranium Mill Tailings Task Force, a local group, and three individuals. The EPA commented that the proposed action is environmentally acceptable.

Comments from one individual and the Durango Task Force focused on their preference (for various reasons) for alternative 3b—transport principally by conveyor. As noted elsewhere in this Record of Decision, the DOE agrees that transport by conveyor (3b) is environmentally preferable although transport by truck (3a) is environmentally acceptable. For reasons discussed previously, selection of the mode of transportation will be determined on the basis of cost, technical factors, estimated environmental impacts, and other factors.

The Colorado Department of Health expressed concern regarding several elements of the concept for relocation to Bodo Canyon. As suggested in the Department's comments, the DOE agrees that the best mechanism for addressing these concerns is through development of the final detailed design and specifications.

One individual and the Division of Wildlife focused on wildlife issues, wildlife mitigation, and related items. Since publication of the FEIS, the DOE has prepared a mitigation plan for the conveyor transport alternative, modified the mitigation plan for truck transport, met and talked with the Division of Wildlife several times, and has prepared an application for land withdrawal for permanent use of the lands as the disposal site. The application and recommended mitigations will be reviewed by the Colorado Wildlife Commission in March 1986.

A local group claimed that the FEIS is unacceptable and in violation of the National Environmental Policy Act. The group stated that their comments on the draft EIS, as well as those of other agencies, were addressed superficially or ignored. They were also concerned that alternatives were not treated

equally, that the FEIS was biased toward Alternative 3, that worst-case scenarios were not prepared, and that economic uncertainties, vis-a-vis congressional and Colorado funding, were not factored into the FEIS.

All of the comments on the draft EIS were included in the FEIS and were addressed considering such factors as the level of engineering detail in the concepts and the available data. Further, each alternative was analyzed in the detail commensurate with the sensitivity of the environmental component. For example, wildlife issues were far more sensitive at Bodo Canyon than at either the Durango site or Long Hollow and were treated accordingly. The impact analyses provide realistic upper limits of impacts which are applicable regardless of the funding schedule.

#### Basis for Decision

Pursuant to the requirements of UMRCA, EPA identified the environmental and health problems posed by inactive uranium milling sites. EPA determined that the most significant public health risks associated with inactive tailings were posed by prolonged exposure (from radon-daughter products) to people living and working in structures contaminated by relocated tailings. As a result of these conclusions, prevention of misuse and dispersal of tailings is the primary objective of the EPA standards. Accordingly, long-term stability was emphasized in the development and promulgation of the rules. This is consistent with the guidance provided by the legislative history of Pub. L. 95-604 which stresses the importance of avoiding remedial actions which would be effective only for a short period of time and which would require future Congressional consideration.

The EPA standard-setting process distinguished "passive controls," such as thick earthen and rock covers from "active controls," such as semipermanent covers, fences, signs, and restrictions on land use that would require frequent replacement or other major repairs requiring the expenditure of public funds. The standard is framed as a longevity requirement which recognizes the difficulty in predicting very long-term performance with a high degree of confidence. Therefore, EPA established a design objective of 1000 years with a minimum period of 200 years; a time span which is more consistent with engineering experience. In establishing the standards, EPA determined that the radon emission limitation could be achieved by well-designed thick earthen covers. These

control techniques would also be compatible with those required to meet the longevity standard.

The standards recognize the need for institutional controls, such as custodial maintenance, surveillance, and emergency response measures. In its preamble to the rules, EPA calls for such controls to be provided as an essential back-up to the primary passive controls.

In developing the regulations, EPA reviewed available water-quality data at inactive tailings sites and determined that there was little evidence of recent movement of contaminants into ground water. They also determined that any degradation of ground-water quality should be evaluated in the context of potential beneficial uses of the ground water as determined by background water quality and the available quantity of ground water.

On September 3, 1985, the United States Tenth Circuit Court of Appeals set aside the EPA Standard applicable to the protection of waterways and ground water, 40 CFR Part 192.20(a) (2)-(3). The water protection standard was remanded to the EPA for further consideration in light of the Court's opinion that the water standard promulgated by the EPA on March 7, 1983, was site specific rather than of general application as required by the legislation. EPA has not identified a date for reissuance of 40 CFR Part 192.20(a) (2)-(3), and it is anticipated that such reissuance will not occur until after remedial action has been initiated at the Durango site. Therefore, DOE and the State will implement the remedial action, with the concurrence of NRC and after consultation with EPA.

Whether EPA, in re-issuing the water standard, sets forth a technical approach similar to either the current active site water standard or that proposed prior to promulgation of 40 CFR Part 192.20(a) (2)-(3) for the inactive Durango site, DOE has thoroughly characterized conditions at the mill site, and alternate sites, and does not anticipate that any substantive changes to the remedial action will be required to assure adequate protection of water resources.

It is the intent of the DOE to meet the EPA standards for remedial action at the former Vanadium Corporation of America site at Durango. Although each of the action alternatives would meet the EPA standards, it is evident from the EIS and the discussion below that, of the alternatives, relocation to Bodo Canyon would better isolate the tailings and minimize the possibility of future human exposure. Therefore, in view of the long-term advantages, relocation to Bodo



Canyon is considered the environmentally preferable alternative.

In comparison to relocation to Bodo Canyon and as noted in the EIS, the no action alternative is unacceptable since without remedial action the DOE cannot ensure that the tailings would not continue to be dispersed by wind, water, or man. Radon exhalation at the site also would continue to exceed the EPA standard.

In comparing relocation to Bodo Canyon with stabilization in place, the EIS indicates that relocation would result in an increase in short-term (i.e., during remedial action) economic, and environmental impacts beyond those identified for stabilization on the Durango site. These impacts include health effects to the remedial action worker, particulate and combustion emissions, vehicular traffic, and remedial action costs.

However, as indicated in the EIS, relocation will provide long-term environmental benefits and assure total compliance with the EPA standards for at least 1000 years. For example, some of the Durango tailings are located within the floodplain of the Probable Maximum Flood of the Animas River, at the edge of the city of Durango. Stabilization in place partially within the floodplain would only achieve the 200-year EPA longevity standard. In addition, stabilization in place would require additional long-term maintenance of the site because of its location near the river and because of the use of diversion ditches on Smelter Mountain. These factors led the DOE to favor moving the tailings to an alternate disposal site where flooding would not be a problem.

Of the two alternate disposal sites which were recommended by the State of Colorado, the Bodo Canyon site is closer, approximately 3.5 miles away, whereas the Long Hollow site is 11 miles away from the Durango site. The following factors were considered before the DOE selected Bodo Canyon as the disposal site.

1. The Durango tailings contain a considerable amount of residual uranium which could be recovered by heap leaching or other techniques prior to final disposal of the tailings. The amount of level land required for a heap leaching operation is present at the Long Hollow site, but not the Bodo Canyon site. However, this point became moot when no mining company, including Hecla Mining Company (owner of the tailings), expressed interest in reprocessing the tailings.

2. Protection of the shallow ground-water resources to comply with EPA guidance at the Long Hollow site would

be difficult. On the other hand, the Bodo Canyon site was found to be a technically adequate site where the tailings could be stabilized to meet the 1000-year EPA ground water and longevity standard. The gullies near the Bodo Canyon site would be armored with rock to prevent encroachment of the gullies onto the tailings embankment.

3. Protection of wildlife resources was an element that complicated the decision to select Bodo Canyon because the site is located in the Bodo State Wildlife Area, managed by the Colorado Division of Wildlife. Although habitat for elk and deer are present at both Long Hollow and Bodo Canyon, the Bodo Canyon area is managed specifically to promote the perpetuation of game and non-game species. The DOE has met on numerous occasions with the Colorado Division of Wildlife to discuss wildlife concerns and possible mitigation measures and fully anticipates reaching a mutually satisfactory wildlife mitigation plan for disposal of the tailings at Bodo Canyon, incorporating elements described in the FEIS.

4. The increased cost of moving the tailings to the Long Hollow site, when compared with the Bodo Canyon site, is another factor considered by the DOE in selecting the remedial action. The alternative of moving the tailings to Long Hollow for stabilization would cost approximately \$41.8 million, compared with \$24.1 to \$26.3 million for disposal at Bodo Canyon, using conveyor or truck transportation, respectively. Saving \$15.5 to \$17.7 million of taxpayers' money, and still complying with the EPA standards, is considered to be a positive aspect of this decision.

5. The hazards to workers and the public from truck traffic would be much lower with disposal of the tailings at Bodo Canyon, rather than Long Hollow, due to the lower number of vehicle miles traveled.

#### Considerations in the Implementation of the Decision

The DOE is aware of the many concerns that have been expressed about the environmental and health impacts from the remedial action. In implementing its decision, the DOE will comply with applicable Federal, state, and local regulations to avoid or minimize health and environmental impacts. The following monitoring and mitigation measures will be employed to avoid or minimize impacts during the remedial action:

Radiation Release—The release of contaminated particulates will be reduced by dampening contaminated materials with water and/or dust

suppressants, by stopping contaminated material-handling operations during adverse weather conditions, and by using trucks with tight-fitting tailgates or seals and covers. The conveyor system, if used, will utilize emission controls, such as water spray, at loading and unloading terminals, and at transfer points. One conveyor design considered for transportation also encloses the tailings within the belt during transport, which would further reduce emissions.

The inadvertent off-site transportation of radioactively contaminated material will be controlled by the use of decontamination facilities (e.g., truck wash stations) to clean trucks and other vehicles before leaving the site. On the Durango site, all waste-water streams will be monitored and treated before off-site disposal; all disturbed areas (Durango and Bodo Canyon sites) will be isolated from surface-water systems by erosion-control methods.

Human exposure to residual radioactive material will be reduced by restricting access, and by providing the monitoring and protective equipment and training programs necessary for use by the remedial action workers. An extensive environmental monitoring program will be implemented during remedial action to monitor radon and particulates in air.

Air emissions—Construction areas and roads will be sprayed as required during the remedial action period with water and/or a dust suppressant. Contaminated material will be transported in covered trucks. Tailings will not be disrupted during adverse weather conditions.

Water contamination—To prevent possible flooding of the sites during excavation and handling of the contaminated material, protective dikes isolating the disturbed material from surface-water systems will be installed. The construction of collecting and retention basins will permit the collection and evaporation of waste water resulting from washing vehicles and equipment. All effluent water will be monitored and evaporated. The sediment from the retention basins will be buried in the embankment at the Bodo Canyon site.

Transportation networks—The use of a conveyor system, if selected, to transport materials between the two sites would mitigate the impacts to the local county road network. County Roads 211 and 212 would be used by trucks hauling demolition rubble and other materials that cannot be transported by conveyor.

If truck transport were selected, County Roads 211 and 212 would be



heavily used requiring road improvement and periodic maintenance. Truck traffic would be scheduled during daylight hours to avoid unnecessary collisions with big game animals. Trucks will be covered and the tailgates sealed to prevent loss of contaminated materials.

Additional wildlife impact mitigation measures that will be implemented are: (1) Worker education for wildlife collision avoidance; (2) vehicle speed restrictions; (3) reporting big game road kills to the Colorado Division of Wildlife (CDW); (4) reimbursement to CDW for road killed animals; (5) vehicle exhaust system checks for noise reductions; (6) prohibition of employee firearm

possession at work areas; (7) short-term wildlife habitat enhancement; (8) temporary fencing of the disposal area; (9) providing funds for recreational activities to offset curtailment of recreation access at the Bodo Canyon site; and (10) providing funds for replacement of affected habitat by acquisition of additional land with suitable wildlife habitat.

Details of the monitoring plans and mitigations specified above will be contained in several documents scheduled to be prepared prior to remedial action. These include the Remedial Action Plan (including the final design and specifications), and the

UMTRA Project Environmental Health and Safety Plan.

#### Conclusion

After consideration of all reasonable project alternatives, the DOE has decided to relocate the residual radioactive materials from the Durango site to the Bodo Canyon site for long-term stabilization and control in compliance with the EPA standards.

Issued in Washington, DC on April 2, 1986.

James W. Vaughan, Jr.,

*Acting Assistant Secretary for Nuclear Energy.*

[FR Doc. 86-8001 Filed 4-9-86; 8:45 am]

BILLING CODE 6450-01-M



# Best Management Practices

Thursday  
April 10, 1986

## Part IV

## Department of Energy

Floodplain and Wetlands Statement of  
Findings; Remedial Action at the Durango  
Uranium Mill Tailings Site, Durango, CO;  
Notice



## DEPARTMENT OF ENERGY

**Floodplain and Wetlands Statement of Findings; Remedial Action at the Durango Uranium Mill Tailings Site, Durango, CO****AGENCY:** Department of Energy.**ACTION:** Floodplain and wetlands statement of findings.**SUMMARY:** This is a Statement of Findings, prepared pursuant to Executive Order 11988 and 11990, and 10 CFR Part 1022, Compliance with Floodplain/Wetlands Environmental Review Requirements.

Under authority granted by the Uranium Mill Tailings Radiation Control Act of 1978 (Pub. L. 95-604 dated November 8, 1978), the U.S. Department of Energy (DOE) proposes to clean up the residual radioactive wastes and other contaminated materials at the inactive uranium mill tailings site located at Durango, Colorado. The proposed remedial action will move and stabilize the radioactive wastes according to a plan to be concurred in by the U.S. Nuclear Regulatory Commission and the State of Colorado. The proposed remedial action is in conformance with the U.S. Environmental Protection Agency (EPA) Standards for Cleanup of Inactive Uranium Processing Sites (40 CFR Part 192).

Most of the radioactively contaminated materials (estimated 1,617,000 cubic yards) are located out of the 100-year floodplain and wetlands along the Animas River and Lightner Creek. However, about 13,000 cubic yards of contaminated soils lie within the 100-year floodplain and wetlands (see Attachments A and B). Therefore, each of the remedial action alternatives involves action in a floodplain/wetlands area.

The principal feature of the proposed action, stabilization of the tailings at Bodo Canyon, is the transportation of tailings and other contaminated soils (from the floodplain, adjacent windblown areas, and the raffinate ponds area) approximately 3.5 miles southwest to the Bodo Canyon disposal site. This will protect the stabilized pile from long-term river meander, flooding, and slope failure. At Bodo Canyon the

materials will be placed on a prepared surface and contoured into an embankment. The materials would be covered with compacted clay to control radon exhalation and water infiltration; this cover would be topped with rock for erosion protection.

Specific construction activities related to the floodplain and wetlands area include: (1) Removal of five acres of vegetation on the floodplain prior to excavation of about 13,000 cubic yards of contaminated soils (average two feet deep); and (2) grading and revegetating the floodplain and wetlands area (5 acres) where contaminated soils were excavated.

The DOE examined five alternatives for the remedial actions in the "Final Environmental Impact Statement—Remedial Actions at the Former Vanadium Corporation of America Uranium Mill Site, Durango, La Plata County, Colorado, DOE/EIS-0111F." The DOE's proposed action (alternative 3 in the final EIS) is decontamination of the Durango site and relocation and stabilization of the wastes to the Bodo Canyon site. The four other alternatives analyzed in the EIS include: (1) No action, (2) stabilization in place at the Durango site, (3) decontamination of the Durango site and relocation and stabilization of the wastes to the Long Hollow site, and (4) decontamination of the Durango site and reprocessing of the tailings and stabilization at the Long Hollow site.

Pursuant to 10 CFR Part 1022, the DOE prepared a floodplain and wetlands assessment. This assessment was published as Appendix J in the draft EIS and is incorporated into the final EIS by reference.

The remedial action has been designed to conform to applicable Federal and state regulations. Before construction begins, all applicable permits and approvals, such as those required under section 404 of the Clean Water Act, will be obtained from the U.S. Army Corps of Engineers and other agencies having jurisdiction.

Initial consultation with the agencies has taken place and, as a result, the design has been modified to include several mitigative measures. During the construction activities, impacts to the floodplain will be minimized by several means: materials will be excavated from

the floodplain during the seasonally dry period when riverflow is lowest; riparian vegetation adjacent to areas under excavation will be left intact; and revegetation will be initiated as soon as practicable.

The potential short-term and long-term impacts to the wetlands area would be mitigated by the following actions: (1) Recontouring of excavated areas to create drainage patterns that are favorable to reestablishment of scrub-shrub wetlands (select topsoil fill or fertilizer amendments may be needed in some areas to create conditions suitable for growth of desirable plant species); (2) revegetation of the area using plant materials that will lead to reestablishment of palustrine scrub-shrub wetlands (revegetation would be accomplished by using plant seed, shrub transplants, and tree/shrub "pole planting" and plant species would be selected to provide wildlife habitat); (3) selective use of water bars, mulch, riprap, or other soil erosion controls to minimize erosion that would otherwise discharge sediment onto the floodplain and impede revegetation efforts; and (4) establishment of a 20-foot buffer zone along the bank of the Animas River and Lightner Creek, where, in most cases, earth disturbing activities will not be allowed.

If areas of contaminated soils are identified closer than 20 feet to the river, the contaminated soils would be excavated. Earth disturbance within the buffer zone would be recontoured and revegetated in a manner similar to other areas of the floodplain.

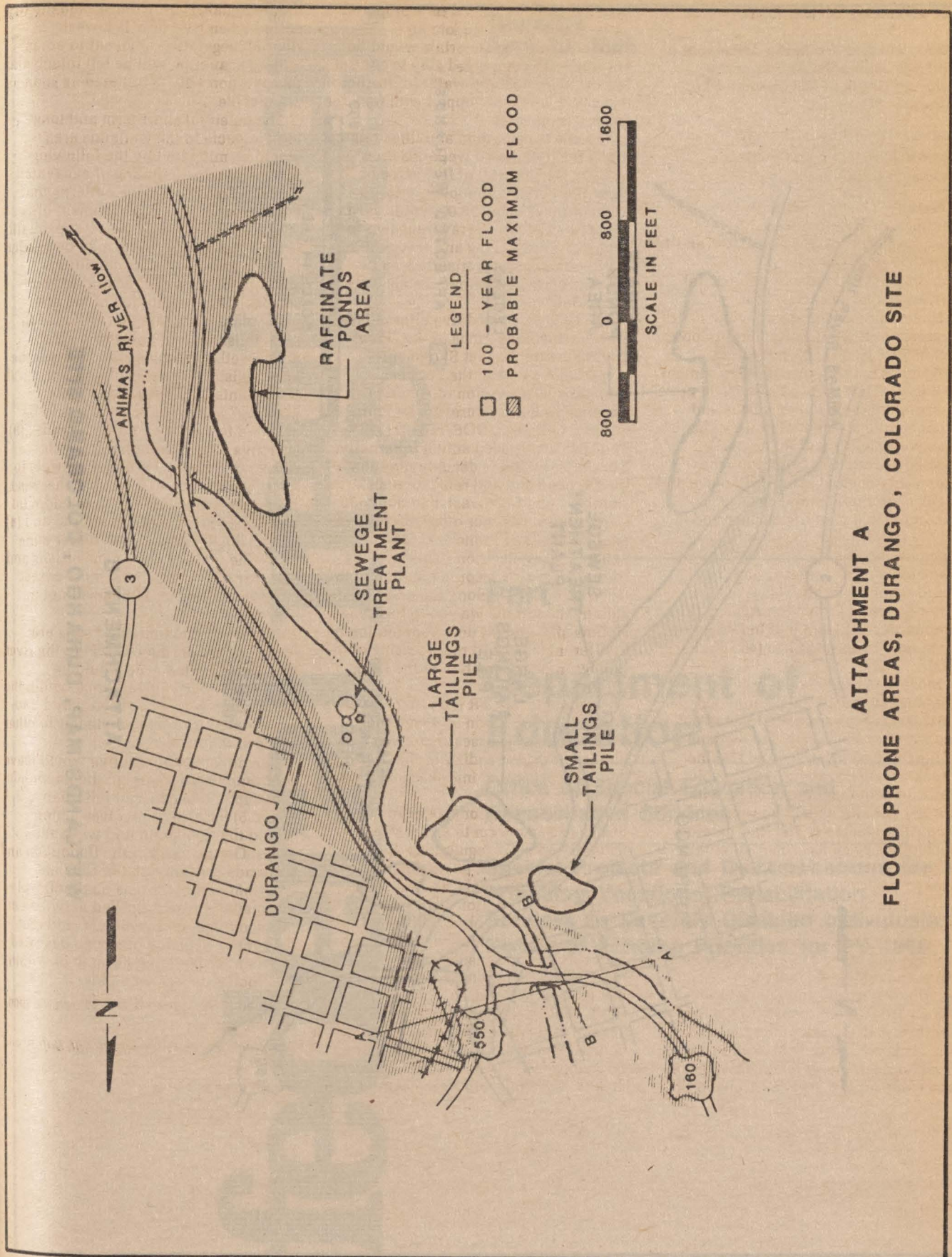
The no action alternative would leave contaminated material in the floodplain. Cleanup of this material (alternative 2, 3, 4, and 5) inherently involves action within the floodplain and wetlands areas. On the basis of the floodplain and wetlands assessment, the DOE has determined that there is no practicable alternative to the proposed activities in the floodplain and wetlands, and that the proposed action has been designed to minimize potential harm to or within the floodplain and wetlands.

Issued at Washington, DC, March 28, 1986.

Mary L. Walker,  
Assistant Secretary, Environment, Safety and Health.

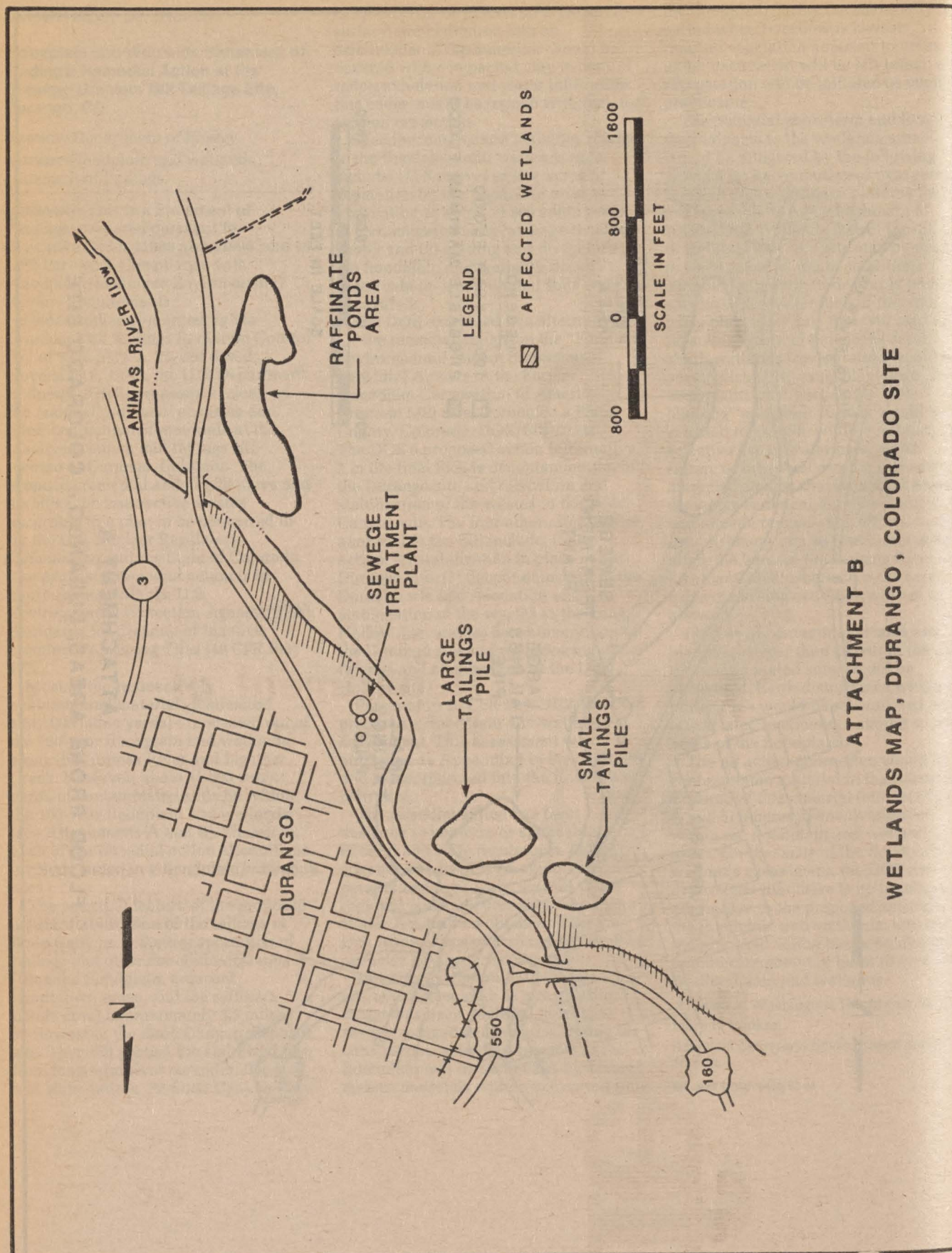
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ATTACHMENT A  
FLOOD PRONE AREAS, DURANGO, COLORADO SITE





ATTACHMENT B  
WETLANDS MAP, DURANGO, COLORADO SITE



# Best Start Project

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Thursday  
April 10, 1986

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## Part V

### Department of Education

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Office of Special Education and  
Rehabilitative Services

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Special Projects and Demonstrations for  
Providing Vocational Rehabilitation  
Services to Severely Disabled Individuals;  
Notice of Funding Priorities for FY 1986



**DEPARTMENT OF EDUCATION****Office of Special Education and  
Rehabilitative Services****Special Projects and Demonstrations  
for Providing Vocational Rehabilitation  
Services to Severely Disabled  
Individuals****AGENCY:** Department of Education.**ACTION:** Notice of final funding priorities  
for Fiscal Year 1986.

**SUMMARY:** The Secretary announces final annual funding priorities for grants for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals. The Secretary announces priorities to direct funds to the areas of greatest need during Fiscal Year 1986. The final priorities support applications which: (a) include effective strategies to support transition from school to work for persons with severe learning disabilities, (b) demonstrate the best practices known today to overcome barriers to employment of persons with traumatic head injuries, (c) demonstrate alternative employment opportunities for individuals who have been in sheltered employment three or more years, and (d) emphasize the matching of the abilities of handicapped workers with neuro-muscular disabilities with jobs requiring minimal or no motor skills. These priorities will ensure wide and effective use of program funds.

**EFFECTIVE DATE:** These final funding priorities take effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:**

Dr. James W. Moss, Office of Developmental Programs, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3042, M/S 2312), Washington, DC 20202. Telephone: (202) 732-1347.

**SUPPLEMENTARY INFORMATION:** Grants for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals are authorized by Section 311(a)(1) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777a(a)(1)). Program regulations are established at 34 CFR Part 373. The purpose of the Special Projects and Demonstrations for the Severely Disabled program is to establish programs which hold promise of expanding or improving vocational rehabilitation and other rehabilitation

services to disabled persons (especially those with the most severe disabilities), irrespective of age or vocational potential.

**Summary of Comments and Responses**

A notice of proposed annual funding priorities was published in the *Federal Register* on November 20, 1985 (50 FR 47799) for the Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals program. A total of 95 letters of comment were received in response to the Notice of Proposed Rulemaking. Comments were received from national organizations representing professional groups and service providers, State organizations and agencies, local service providers, and private citizens. Five commenters were generally supportive of one or more of the four priorities.

The largest number of comments (59) were submitted by service agencies and consumer advocacy organizations in behalf of the chronically mentally ill. They requested that an additional priority be added for this disability group. Priorities under this program change from year to year, and although a priority for the disability group has not been added, suggestions made with regard to projects for the chronically mentally ill will be considered in future planning. The Rehabilitation Services Administration (RSA) has traditionally supported projects assisting persons with mental and emotional disabilities. In recent competitions, about twenty percent of the projects awarded grants have addressed the special vocational rehabilitation needs of this population. Prospective applicants, particularly those in the field of mental health, are encouraged to submit applications under one of the announced priorities or in the non-priority category.

The second largest number of comments were received in response to Priority number 3 (Alternatives to Restricted Segregated Employment). These comments and the Department's responses are summarized below:

**Comment.** Thirty-two comments addressed Priority number 3. All but one expressed concern that the priority as written reflected negatively upon sheltered employment facilities. One commenter recommended that the notice of proposed annual funding priorities be withdrawn.

**Response.** No change has been made. The Secretary did not intend the wording of this priority to reflect negatively upon sheltered employment facilities. The historical development and contributions of these facilities, and their essential role in the total spectrum

of rehabilitative services, is established and well-recognized. As more than one commenter pointed out, facilities are successfully active both in providing sheltered employment as well as in placing severely disabled persons in employment in the broader community. Because of this, it is expected that applications will be submitted by sheltered employment facilities either to expand their existing out-placement services or to initiate such services for severely disabled individuals. The anticipated development of employment alternatives by different types of agencies and organizations under this priority will increase alternative employment opportunities for persons with the most severe disabilities, and thereby further expand vocational rehabilitation services for this population.

**Comment.** One commenter suggested that rehabilitation engineering technology be utilized in projects submitted under Priority number 3, and that less emphasis be placed on cost-effectiveness, since while initial placement costs might appear to be high, they most likely would be outweighed by long-term cost reductions and wages earned. It also was suggested that while priority might be given to persons in placement three years or more, persons inappropriately placed for less than three years should be also afforded opportunities for alternative employment.

**Response.** A change has been made. The importance of rehabilitation engineering both in the evaluation process as well as in job site modification is well recognized. Accordingly, the wording has been changed to indicate that rehabilitation engineering would be an appropriate service under this priority. The target population of persons placed three years or more has not been changed because of the data presented in the studies mentioned when the priority was proposed. Reference to cost-effectiveness has been deleted based on the rationale behind the commenter's recommendation. The suggested models given at the end of the priority were considered by the Department to be too prescriptive and also have been deleted.

**Comment.** One commenter suggested that rehabilitation engineering technology be required both in the evaluation process and in placement in Priority number 4 (Neuromuscular Disabilities), and that the priority was too restrictive in requiring programs for only those persons with little or no motor skills.



*Response.* A change has been made. Applicants are encouraged to utilize rehabilitation engineering technology as an appropriate service under this priority. The restrictive description of types of placement has been deleted.

#### Proposed Priorities

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary gives absolute preference to applications submitted in Fiscal Year 1986 in response to one of several priorities set forth below.

All applications will be evaluated according to criteria which appear in program regulations at 34 CFR 373.30.

#### Priority 1: Learning Disabled

Projects supported under this priority must include effective strategies to support transition from school to work for persons with severe learning disabilities. The Special Projects Program of the Rehabilitation Administration has previously supported demonstrations in the area of learning disability. The National Institute of Handicapped Research currently supports a Research and Training Center with a focus on learning disabilities plus occasional field-initiated research projects in this same area. As a result, there should be an adequate research and demonstration base for the generation of new program approaches that will lead to successful employment of individuals with severe learning disabilities. This priority would provide practical field testing of new methods coming from research and demonstrations and disseminate tested training and placement practices to encourage their adoption by others. Since time lost between leaving school

and entering employment can be detrimental to disabled individuals, it is particularly important that proposed projects focus on individuals recently completing their formal education.

#### Priority 2: Traumatic Head Injuries

Persons who suffer traumatic head injuries often have severe problems obtaining and maintaining employment. According to information released by the National Institute of Handicapped Research, from 400,000 to 600,000 persons each year suffer severe traumatic head injury. Of these from 30,000 to 50,000 per year are left with disabilities so severe as to preclude return to normal life. Although such individuals may vary significantly in the manifestation of their disability, they frequently have severe learning impairments coupled with loss of short term memory and limited attention span. This priority would demonstrate the best practices known today to overcome these barriers to employment and, in so doing, would document those approaches which appear to work best with individuals with various behavioral characteristics.

#### Priority 3: Alternatives to Restricted, Segregated Employment

In most States there are severely disabled individuals in sheltered employment who have been there for many years because this was the only work opportunity available to them. Often these individuals have been institutionalized for some period of their lives, and this is the only work experience they have had. This priority would demonstrate alternative employment opportunities for individuals who have been in sheltered employment three years or more, but

who can become productive in less restrictive and less segregated environments if given the opportunity. Rehabilitation engineering would be an appropriate service under this priority.

#### Priority 4: Neuro-Muscular Disabilities

A continuing concern of the Secretary is the insufficient number of competitive employment opportunities for handicapped individuals whose disabilities cause severe motor control problems. While motor skills are essential in some occupations, there are other occupations which can be managed without motor skills or where the need for such skills can be minimized. This priority would emphasize the matching of handicapped workers' abilities with appropriate jobs. Applicants must propose a program that includes vocational evaluation; counseling; guidance; training, if needed, by the project or other community resources; placement; and follow along services as needed. In addition, it is critical that the applicant include strategies for outreach to potential employers, providing them with informational and educational assistance, and identifying employment opportunities for disabled individuals participating in the program. Applicants are encouraged to utilize rehabilitation engineering technology as an appropriate service under this priority.

(29 U.S.C. 777a(a)(1))

Dated: April 7, 1986.

(Catalog of Federal Domestic Assistance No. 84.128, Special Projects and Demonstrations Providing Rehabilitation Services to the Severely Disabled.)

William J. Bennett,

Secretary of Education.

[FR Doc. 86-8023 Filed 4-9-86; 8:45 am]

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# State Report

Thursday  
April 10, 1986

## Part VI

## Department of Education

34 CFR Part 692

State Student Incentive Grant Program;  
Proposed Rule



## DEPARTMENT OF EDUCATION

## 34 CFR Part 692

## State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the State Student Incentive Grant (SSIG) Program to require States which participate in the program to match their Federal allotments for grants to students from direct State appropriations. The proposed amendments also would allow States to match their Federal award at the program level rather than at the grant level; that is, a State need not use State funds to pay at least 50 percent of each SSIG Program grant it awards as long as the State's total expenditure of State funds for grants to students under its SSIG Program is at least equal to the total amount of Federal SSIG funds it receives and spends for that purpose.

**DATES:** Comments must be received on or before May 27, 1986.

**ADDRESSES:** All comments concerning these proposed regulations should be addressed to Neil C. Nelson, Chief, State Student Incentive Grant Program, Office of Student Financial Assistance, Office of Postsecondary Education, U.S. Department of Education (Room 4026, ROB-3), 400 Maryland Avenue SW., Washington, DC 20202.

**FOR FURTHER INFORMATION CONTACT:** Neil C. Nelson, Telephone (202) 472-4265.

**SUPPLEMENTARY INFORMATION:** The Administration has not requested funds for this program for operation in fiscal year 1987. Under the current program regulations, a State may force institutions participating in its SSIG Program to provide the required State matching funds as a condition of participation in its program. The Secretary believes that this practice is not in keeping with the underlying purpose of the SSIG Program which is to encourage States to establish and expand their own grant programs of student financial aid. The Secretary is proposing to amend § 692.3 to make Subpart G of 34 CFR Part 74 (Administration of Grants) inapplicable to the SSIG Program. Since Subpart G permits grantees to meet their cost sharing obligations with donated funds from third parties, the proposed change will require the States to match their Federal allotments from direct State appropriations. The proposed rule, however, will continue to permit States to receive voluntary contributions from

private sources which could be included in the State Grant program above and beyond the matching requirement. In order to avoid any undue hardships to those States that are currently requiring institutions to pay the State's SSIG matching requirement, and to enable them to make the necessary adjustments to conform with the new requirements, the Secretary is proposing to make this change effective starting with the 1987-88 award year.

The Secretary also proposes to amend § 692.21 to allow greater flexibility to States in complying with the SSIG Program matching requirements. Section 692.21(g)(1) currently requires that a State must pay with State funds at least fifty percent of each SSIG Program grant it awards. The Secretary is proposing to amend § 692.21(g)(1) to permit a State to match the Federal funds it receives on a program rather than on a grant basis. As a result, the State will no longer have to use State funds to pay fifty percent of each SSIG Program grant it awards as long as the State's total expenditures of State funds for grants to students under its SSIG Program is at least equal to the total amount of Federal SSIG funds it receives and spends for that purpose. This proposal will ease the accounting burden on institutions. It will also permit States to make SSIG Program grants to students attending all nonprofit private institutions in a State, as required by § 692.21(e), even if State law prevents the expenditure of State funds for that purpose. Thus, a State could use its SSIG Federal allotment to provide grants to students at private institutions as long as it provides at least as much money from direct State appropriations for grants to students at public institutions for the same academic year. The Federal rules established by statute and regulations which govern the administration of the SSIG program would apply equally to those aspects of funded programs supported by Federal funds and State appropriations. States would still be required, for example, to select all SSIG recipients on the basis of substantial financial need.

**Executive Order 12291**

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. State educational agencies administer

the program. States and State agencies are not small entities under the Regulatory Flexibility Act.

A limited number of institutions of higher education will be affected by the proposed change in the regulations to prevent States from requiring participating institutions to provide matching funds as a condition for participation in the program. Changing the matching requirement from a grant to a program basis will also affect institutions of higher education by reducing their accounting burdens, but this change will not have a significant economic impact on the institutions.

**Intergovernmental Review**

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 4026, GSA Regional Office Building #3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency of authority of the United States.



**List of Subjects in 34 CFR Part 692**

Education, Grant programs—  
Education, State-administered—  
Education, Student Aid.

(Catalog of Federal Domestic Assistance  
Number 84.069: State Student Incentive Grant  
Program)

Dated: April 3, 1986.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part  
692 of Title 34 of the Code of Federal  
Regulations as follows:

**PART 692—STATE STUDENT  
INCENTIVE GRANT PROGRAM**

1. The authority citation for Part 692 is

revised to read as follows:

Authority: 20 U.S.C. 1070c-1070c-3, unless  
otherwise noted.

2. In § 692.3, paragraph (b) is revised  
to read as follows:

**§ 692.3 What regulations apply to the  
State Student Incentive Grant Program?**

(b) The Education Department  
General Administrative Regulations  
(EDGAR) in 34 CFR Part 74  
(Administration of Grants) except for  
Subpart C, Part 76 (State-Administered  
Programs), Part 77 (Definitions That  
Apply to Department Regulations), and  
Part 78 (Education Appeal Board).

3. In § 692.21, paragraph (g)(1) is  
revised to read as follows:

**§ 692.21 What requirements must be met  
by a State program?**

(g) \* \* \*

(1) The State will pay an amount for  
grants under this part for each fiscal  
year that is not less than the payment to  
the State under this part for that fiscal  
year; and

[FR Doc. 86-8021 Filed 4-9-86; 8:45 am]

BILLING CODE 4000-01-M







# Special Report Federal Register

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Thursday  
April 10, 1986

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## Part VII

### Department of Education

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Office of Special Education and  
Rehabilitative Services

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National Institute of Handicapped  
Research; Funding Priority for Fiscal  
Year 1986



## DEPARTMENT OF EDUCATION

## National Institute of Handicapped Research; Funding Priority for Fiscal Year 1986

**AGENCY:** Department of Education.

**ACTION:** Notice of Final Funding Priority for Research and Demonstration Projects in Research Training for Fiscal Year 1986.

**SUMMARY:** The Secretary of Education announces a funding priority for rehabilitation research training to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1986. NIHR is required under the Rehabilitation Act of 1973, as amended, to develop a long-range research plan which identifies rehabilitation research that needs to be conducted and to determine funding priorities which will facilitate the support of these activities within available resources. This priority is derived from the NIHR Long-Range Plan and is articulated within the goals, objectives, and research activities specified in the Plan.

This priority was proposed for public comment through publication in the *Federal Register* on November 26, 1985 (50 FR 48738). Several comments were received and are summarized in the "Summary of Comments and Responses" section of this notice. No changes were made to the proposed priority as a result of these comments.

**EFFECTIVE DATE:** This priority takes effect either 45 days after publication in the *Federal Register* or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Betty Jo Berland, National Institute of Handicapped Research, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue SW., Switzer Building, Room 3070, Washington, DC 20202, Telephone (202) 732-1139; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

**SUPPLEMENTARY INFORMATION:** The Secretary plans to make awards under section 204(a) of the Rehabilitation Act to public or private agencies and organizations, including institutions of higher education, to develop, conduct, and evaluate programs of advanced training in rehabilitation research.

The purpose of these programs is to produce highly qualified researchers in rehabilitation-related disciplines by providing to selected individuals research training and opportunities to conduct rehabilitation research, to

participate in individualized programs of academic and professional development in rehabilitation, and to collaborate with recognized experts in rehabilitation research. This activity is intended to prepare future leaders in the field of rehabilitation research.

NIHR is authorized to support research and related activities in a variety of areas and through several program authorities. The priority announced in this notice is for training in rehabilitation research, to be supported under the Research and Demonstration Program. Under this program, NIHR may support research, demonstrations, development, or related activities in areas related to rehabilitation of disabled individuals. NIHR is announcing a priority for one or more projects to train qualified individuals in selected areas of rehabilitation research.

NIHR final regulations (46 FR 45300, September 10, 1981, as amended March 12, 1984 at 49 FR 9324), authorize the Secretary to establish research priorities by reserving funds to support particular research activities (see 34 CFR 351.32).

The publication of this final priority does not bind the Department to fund projects in this or any other area. Funding of particular projects depends on both the availability of funds and on the receipt of satisfactory applications.

#### Priority for Rehabilitation Research Training

NIHR is the lead Federal agency responsible for addressing national needs in rehabilitation through research, and for fostering opportunities for the pursuit of scientific inquiry and development of knowledge relevant to the problems of disability. As such, NIHR is concerned with developing a cadre of scientists trained in research related to rehabilitation. The reports of the House and Senate Committees on Appropriations accompanying the NIHR fiscal year 1985 appropriation recommended that NIHR support additional rehabilitation research training.

NIHR has identified a particular need to increase the number of qualified researchers in medicine and allied health fields. Terminal degrees awarded in medicine, and in some related health professions, are basically clinical degrees, and generally do not include the intensive research training necessary to support excellent scientific investigation. The Association of American Medical Colleges, on the basis of a 1984 survey of recent graduates, reported that 56% of respondents believed they had been inadequately prepared in research techniques.

There are many medical specialties which bear directly on the rehabilitation of disabled individuals, including neurology, orthopedics, psychiatry, internal medicine, cardiology, physical medicine and others. To take an example from one of these specialties—physiatry—there are indications that the number of physicians in this area engaged in research is declining. In many areas of medicine, there is ongoing research which is basic scientific inquiry, but which may not directly advance the application of medical science to rehabilitation.

The purpose of this priority is to prepare clinically trained individuals for research careers in the health sciences related to rehabilitation.

An absolute priority will be given to applications for a Research and Demonstration Project, to be called a Rehabilitation Research Career Development Project, which will:

- Establish individualized programs to train qualified individuals in rehabilitation research within an environment suitable for advanced training in rehabilitation research; these programs may include didactic instruction, exposure to new developments and outstanding researchers and practitioners, scientific research experience, scientific mentorship, collegial and collaborative investigations, participation in joint programs involving more than one institution, and participation in meetings and conferences directly related to appropriate research topics;
- Establish such training programs utilizing available facilities, staff, and other resources of existing programs which are demonstrated to be adequate and suitable environments for the conduct of advanced training in rehabilitation research;
- Identify, recruit, and provide individual support to one or more qualified clinicians from among the following eligible categories: individuals licensed to practice medicine, including osteopathic medicine and podiatry, in one or more States; individuals holding a graduate degree in clinical health-related fields (e.g., nursing, physical therapy, or other allied health professions); and engineers and other scientists whose overall combination of training, experience, and achievement demonstrates a potential to attain leadership roles in rehabilitation research;
- Provide a research training program which significantly involves the candidates in clinical research at the doctoral or postdoctoral level in an area of interest to the rehabilitation field;



- Provide a career development program of up to three years of training and direct experience in clinical rehabilitation research (these programs may include activities which contribute to meeting the requirements of advanced degrees and credentials in relevant academic fields); and,

- Assess the value of the research training program through careful documentation of the process, including recruitment, training, and research experiences, as well as through evaluation of the outcomes.

#### Summary of Comments and Responses

NIHR received a few comments when this priority was proposed. Some of the comments related to matters that were part of the application notice, such as the amount of available funds or funding dates. The following is a summary of comments which were related to the substance of the priority, and the Secretary's responses to those comments.

**Comment:** Several commenters mentioned the restriction of the career development awards to certain professions and academic disciplines, and urged that various other disciplines or all rehabilitation-related fields be included in the scope of the priority.

**Response:** No change has been made. The Secretary intends that the priority be limited in 1986 to providing rehabilitation research training for physicians, practitioners in allied health professions, and certain engineers as stated in the priority. NIHR has identified a pressing need to increase the number of trained researchers in these disciplines, and thus has limited the scope of the priority for this year.

**Comment:** One commenter stated that the priority should state that doctoral degrees are not required, and that other

appropriate terminal degrees are also acceptable.

**Response:** No change has been made. The priority as written includes as eligible for training those individuals with terminal clinical degrees in allied health professions and appropriate degrees in the engineering fields. There is no requirement that research trainees have doctorates where the professional norm is a different degree.

**Comment:** Several commenters recommended that, for future competitions, special review criteria be developed to evaluate applications under this priority, since the specialized nature of the priority is not adequately addressed by NIHR's current selection criteria for the Research and Demonstration Projects program.

**Response:** No change has been made. Although selection criteria are not contained in the priority, the priority does specify the scope and range of activities which must be addressed in the application. NIHR will consider the development of new evaluation criteria specifically tailored to research training for future years, based on findings and experiences with this year's competition.

**Comment:** One commenter urged that specific elements be included in the research training program, including training in statistics and methodology and computer literacy, and opportunities for scientific communication.

**Response:** No change has been made. While it is probably true that most or all of these elements must be part of any credible research training program, the Secretary intends to leave the design of the research training program to the applicant. Applications will be evaluated by peers in the field of rehabilitation research, in part in terms of the effectiveness of the program

design for accomplishing the program objective of producing highly qualified rehabilitation researchers. The Secretary points out that opportunities for exposure and exchanges of information within the appropriate scientific community are specifically mentioned in the priority.

**Comment:** One commenter recommended specific priority areas for the research experiences which are to be part of the training program.

**Response:** No change has been made. The Secretary prefers to let applicants propose the specific research activities for their training programs. Applications will be evaluated, in part, on the appropriateness of the proposed research projects and experiences to meet the objective of developing highly skilled researchers. The Secretary believes that to specify the research projects to be included in the training programs would be unduly restrictive, and would prefer to give applicants the opportunity to propose suitable research activities.

**Comment:** One commenter recommended that the language of the priority be modified so as to specify speech-language pathology or audiology as eligible disciplines.

**Response:** No change has been made. The priority encompasses all allied health professions. It is not reasonable to attempt to specify each eligible profession or discipline.

(29 U.S.C. 760-762)

(Catalog of Federal Domestic Assistance Number 84.133P, National Institute of Handicapped Research)

Dated: April 7, 1986.

William J. Bennett,

Secretary of Education.

[FR Doc. 86-8024 Filed 4-9-86; 8:45 am]

BILLING CODE 4000-01-M



The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was organized in 1847 and has since that time been engaged in a constant effort to improve the medical profession and the public health. The Association is composed of members from all parts of the United States and from many foreign countries. It is organized into a hierarchy of local, state, and national associations. The local associations are the primary units of the organization and are responsible for the promotion of the interests of the medical profession in their respective communities. The state associations are organized to represent the interests of the medical profession in their respective states. The national association is the highest authority in the organization and is responsible for the promotion of the interests of the medical profession in the United States and for the promotion of the public health. The Association is engaged in a wide variety of activities, including the publication of the Journal of the American Medical Association, the holding of annual conventions, the promotion of medical education, and the promotion of the public health. The Association is also engaged in a constant effort to improve the medical profession and the public health. It is doing this by promoting the interests of the medical profession and the public, by holding annual conventions, by promoting medical education, and by promoting the public health. The Association is a non-profit corporation and its assets are held in trust for the benefit of the medical profession and the public. It is organized for the purpose of promoting the interests of the medical profession and the public and it is engaged in a constant effort to improve the medical profession and the public health.



# Estimote Federal Paper

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Thursday  
April 10, 1986

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## Part VIII

### Pension Benefit Guaranty Corporation

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29 CFR Parts 2610, 2616, 2617, and 2623  
Single-Employer Pension Plan  
Amendments Act of 1986; Final Rule on  
Payment of Premiums and Notices of  
Transition Rules and Interim Procedures  
on Plan Terminations



## 29 CFR Part 2610

## PENSION BENEFIT GUARANTY CORPORATION

## Payment of Premiums

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Pension Benefit Guaranty Corporation's regulation on Payment of Premiums to provide for an increase in the premium that single-employer plans must pay to the PBGC. The amendment is necessary to implement the Single-Employer Pension Plan Amendments Act of 1986 which increased the single-employer premium from \$2.60 to \$8.50 per participant per plan year. The effect of this rule is to set forth, in the regulation, the premium that was established by Congress for plan years beginning on or after January 1, 1986.

**EFFECTIVE DATE:** April 7, 1986.

**FOR FURTHER INFORMATION CONTACT:** Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 35100, 2020 K Street N.W., Washington, D.C., (202) 956-5050.

**SUPPLEMENTARY INFORMATION:** The Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") became law on April 7, 1986. SEPPAA amends many of the single-employer termination insurance provisions under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). In particular, SEPPAA amends section 4006(a) of ERISA to increase the premium that single-employer plans must pay to the Pension Benefit Guaranty Corporation ("PBGC") from \$2.60 to \$8.50 per participant per plan year. This premium increase is effective for plan years beginning on or after January 1, 1986. This rule amends the PBGC's Payment of Premiums regulation (29 CFR Part 2610) to incorporate this new premium rate.

Section 11005(e) of SEPPAA requires that the PBGC notify the plan administrator of each single-employer plan of the premium increase. The PBGC will directly notify plans that have already paid premiums for the 1986 plan year of the increase and the additional premium amount due. Premium forms for 1986 (PBGC Form 1) mailed after April 7, 1986 will contain an addendum notifying the premium payers that SEPPAA increased the single-employer premium for the 1986 plan year. In addition, the PBGC will send notices of the premium increase directly to the plan

practitioners on the PBGC's bulk mailing list.

Section 11005(e) also established special rules and procedures for plans that have already paid premiums for the 1986 plan year (plans with 500 or more participants) at the \$2.60 rate. Under these rules, for any plan year that begins on or after January 1, 1986 and before May 8, 1986 (i.e., 31 days after enactment of SEPPAA), any unpaid amount of the premium increase is due and payable no later than the earlier of (1) June 6, 1986, 60 days after enactment, or (2) 30 days after the date of the PBGC's notice to the plan of the premium increase. However, in no event would the unpaid premium amount, \$5.90 times the number of participants, be due earlier than the date the premium would otherwise be due under prior law.

The PBGC is mailing statements of account showing the unpaid premium amount directly to plans that have already paid premiums for the 1986 plan year. This statement will include a bill for an additional premium amount that is based on the participant count each plan reported on its 1986 premium filing. The PBGC expects that the due date for the additional payment will, in virtually all cases, be the 30th day after the date of the statement of account. If payment for the additional premium is not made by the due date, interest and penalty charges will accrue from the date in accordance with 29 CFR 2610.7 and 2610.8.

Plans paying premiums for the 1986 plan year after April 7, 1986 must pay at the \$8.50 rate to avoid interest and penalties.

Because the premium increase under this regulation is mandated by SEPPAA, and because of the need to provide immediate guidance for the payment of premiums for the 1986 plan year, the PBGC finds that notice of and public comment on this amendment are impractical and unnecessary. Further, the PBGC finds that good cause exists for making this regulation effective before the 30-day period set forth in 5 U.S.C. 553.

#### E.O. 12291 and Regulatory Flexibility Act

The PBGC has determined that this rule is not a "major rule" within the meaning of Executive Order 12291, because it has no effect on the economy, nor on prices, competition, employment, investment, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule merely incorporates the premium increase and related procedural rules established by the Congress in SEPPAA.

Because no general notice of proposed rulemaking is required for this regulation, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

#### Information Collection

The collection of information requirements contained in the regulation being amended have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 and the regulations thereunder (5 CFR Part 1320) for use through March 31, 1988, OMB No. 1212-0009.

#### List of Subjects in 29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, reporting and recordkeeping requirements.

In consideration of the foregoing, Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

#### PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 is revised to read as follows:

Authority: Secs. 4002(b)(3), 4006, 4007, Pub. L. 93-406, 88 Stat. 1004, 1010, 1013, as amended by secs. 403(1), 105, 402(a)(3), 403(b), Pub. L. 96-364, 94 Stat. 1208, 1302, 1264, 1298, 1300, and by sec. 11005, Pub. L. 99-272 (29 U.S.C. 1302(b)(3), 1306, 1307).

2. In § 2610.5, paragraph (a)(2) is amended by deleting the "or" following the semicolon.

3. In § 2610.5, paragraph (a)(3) is revised and a new paragraph (a)(4) is added to read as follows:

#### § 2610.5 Premium rate.

(a) \* \* \*

(3) For plan years beginning on or after January 1, 1978 up to and including plan years beginning on December 31, 1985: two dollars sixty cents for each individual who is a participant in the plan on the last day of the preceding plan year; or

(4) For plan years beginning on or after January 1, 1986: eight dollars fifty cents for each individual who is a participant in the plan on the last day of the preceding plan year.

Issued at Washington, DC, this 8th day of April, 1986.

Royal S. Dellinger,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 86-8184 Filed 4-9-86; 8:45 am]

BILLING CODE 7708-01-M



**PENSION BENEFIT GUARANTY CORPORATION**

29 CFR Parts 2616, 2617 and 2623

**The Effects of the Single-Employer Pension Plan Amendments Act of 1986 on Voluntary Plan Terminations Initiated On or After January 1, 1986 and Before April 7, 1986****AGENCY:** Pension Benefit Guaranty Corporation.**ACTION:** Notice of transition rules.

**SUMMARY:** This notice summarizes the requirements of the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") relating to terminations of single-employer plans, with emphasis on the transition rules for plans that filed notices of intent to terminate on or after January 1, 1986 and before April 7, 1986 (the date of enactment of SEPPAA). SEPPAA changes many of the rules and procedures for terminating plans and applies to all single-employer plans for which a notice of intent to terminate was filed with the PBGC on or after January 1, 1986. SEPPAA also provides specific transition rules on how plans that filed termination notices prior to enactment are to comply with these new rules and procedures. The effect of this notice is to advise plan administrators of such plans of the steps that must be taken to bring their plan terminations into compliance with the new statutory requirements for plan terminations.

**EFFECTIVE DATE:** April 7, 1986.**FOR FURTHER INFORMATION CONTACT:**

Pension Benefit Guaranty Corporation, Coverage and Inquiries Branch, IOD, Code 25410, 2020 K Street, NW., Washington, DC 20006; or call 202-956-5000 or 202-956-5059 for TTY and TDD (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") became law on April 7, 1986. SEPPAA amends many of the provisions of the Employee Retirement Income Security Act ("ERISA") relating to terminations of single-employer pension plans. SEPPAA applies to all terminations with respect to which a notice of intent to terminate was filed on or after January 1, 1986.

In a separate notice issued today, the Pension Benefit Guaranty Corporation ("PBGC") describes the provisions of SEPPAA as they relate to single-employer plan terminations and advises the public of the procedures to follow to terminate a plan on or after April 7, 1986. However, because SEPPAA applies with respect to notices of intent to terminate filed on or after January 1,

1986, the procedures set forth in that notice will not work for all plans covered by the new law. Accordingly, this notice sets forth modified termination procedures to be followed by plans that have already begun the termination process, *i.e.*, plans with respect to which a notice of intent to terminate was filed on or after January 1 and before April 7, 1986. (In the interest of brevity, such plans are referred to in this document as "pre-enactment plans" and their terminations as "pre-enactment terminations.") Administrators of such plans should familiarize themselves with the other notice as well, as it describes the general principles and procedures that are the starting point for the material set forth below.

The rules described below are in SEPPAA's transition rules (section 11019(b)), and the procedures are established pursuant to the authority conferred on the PBGC by section 11019(c) to prescribe temporary procedures for the purposes of implementing the Act during the 180-day period after enactment.

Because SEPPAA substantially changes the plan termination rules and procedures, plan administrators of pre-enactment plans that have received from the PBGC notices of sufficiency dated prior to April 7, 1986, must immediately cease all actions implementing or carrying out the plan termination. Those terminations may be completed only in accordance with the rules set forth below and, to the extent applicable, in the accompanying notice. Failure to comply with this injunction shall constitute a violation of Title IV of ERISA.

Notices of inability to determine sufficiency issued with respect to pre-enactment terminations prior to April 7, 1986, are hereby declared null and void. Plans that have received such notices may terminate only in accordance with the rules set forth below and, to the extent applicable, in the accompanying notice. If these plans qualify to terminate under the new law, the PBGC will issue them new notices in accordance with amended ERISA section 4041.

Plans with respect to which the PBGC initiated involuntary termination proceedings under ERISA section 4042 between January 1 and April 7, 1986 are not affected by this notice (although the provisions of SEPPAA, to the extent relevant, apply to those plans).

**Notice of Intent to Terminate**

Plan administrators of pre-enactment plans could not have complied with SEPPAA's new notice requirements.

Therefore, the transition rule provides that compliance with the requirements under prior law, *i.e.*, a 10-day advance notice of intent to terminate to the PBGC and a concurrent notice to plan participants of the proposed termination (§ 2616.4 of the PBGC's regulation on notices of intent to terminate), will be deemed to satisfy the new requirement for 60 days advance notice to affected parties of the proposed termination. Items 3 and 11 on Form 5310 show whether these two notice requirements have been met. If they have, the proposed termination date specified in item 11 shall continue to be the proposed termination date under section 4041 of ERISA as amended by SEPPAA. If the notice requirements were not met, the notice of intent to terminate shall be null and void; the PBGC will so notify the plan administrator. If it is still desired to terminate the plan, the plan administrator will have to begin the process again in accordance with amended section 4041.

**Selection of Type of Termination**

Since SEPPAA provides for two specific and distinct types of termination, "standard" and "distress", pre-enactment terminations will have to be converted into one or the other or the termination discontinued. In order to terminate in a standard termination, the plan must be able to satisfy all obligations for "benefit commitments" (*i.e.*, nonforfeitable benefits, including early retirement supplements or subsidies and plant closing benefits; failure to submit a formal application to retire, to complete a required waiting period or to designate a beneficiary does not make a benefit forfeitable). This may necessitate the contributing sponsor's putting additional funds into the plan. Under a distress termination, there is no requirement to provide a specific level of benefits (although there is employer liability if the plan cannot provide all benefit commitments), but a plan may terminate in this manner only if the contributing sponsor and each substantial member of its controlled group satisfy one of the three statutory distress tests. Therefore, contributing sponsors should, as soon as possible, determine which type of termination, if any, they wish to pursue. If neither type seems appropriate, the sponsor normally can choose to withdraw the notice of intent to terminate.

In order to effect this election, the plan administrator must notify the PBGC in writing within 90 days after enactment, *i.e.*, on or before July 7, 1986 (the 90th day, July 6th, falls on a Sunday), of whether the plan



administrator wishes to proceed with a standard termination or a distress termination or whether the administrator wishes to withdraw the notice of intent to terminate. Plan administrators and contributing sponsors should note that the election of a standard or distress termination does not automatically mean that the plan will be permitted to terminate under the chosen method; the method of termination is subject to approval by the PBGC and, in the case of a standard termination, to the plan's ability to actually satisfy all benefit commitments.

If the plan administrator elects to withdraw the notice, the plan will be an ongoing plan and will be treated for all purposes as if the notice had never been filed. There is one important restriction here: if the plan administrator had commenced (or completed) the final distribution of assets pursuant to a notice of sufficiency prior to April 7, 1986, the plan administrator may withdraw the notice of intent to terminate only if prior to so notifying the PBGC, the plan administrator restores the plan in accordance with the rules set forth in the next to last section of this notice. If the plan administrator is unable to restore the plan, then he or she must elect either a standard or distress termination.

If the plan administrator fails to notify the PBGC of the termination election within the 90-day period, the notice of intent to terminate shall be null and void (subject to the restriction noted above for plans that had commenced final distribution), and the PBGC will so notify the plan administrator. In this event, the plan will be an ongoing plan and will be treated for all purposes as if the notice of intent to terminate had never been filed.

When the plan administrator wishes to proceed with the termination, he or she must submit information to the PBGC to enable it to determine that the plan does, in fact, meet the requirements for the type of termination chosen. Accordingly, when the plan administrator elects standard termination, he or she must file with the election notice a certification by an enrolled actuary that the plan will be sufficient to pay all benefit commitments as of the proposed date of distribution. This certification must be accompanied by the plan administrator's certification that the information furnished to the enrolled actuary was accurate and complete. For plans that had filed under the PBGC's enrolled actuary program, the proposed distribution date contemplated when the notice of intent to terminate was filed

will have passed (or will pass very shortly). Therefore, the plan administrator will normally have to select a new distribution date and submit new certifications. Other plans will be submitting these certifications for the first time. (The contents of these certifications are discussed in the accompanying notice.)

When the plan administrator elects a distress termination, he or she must submit with the election notice information adequate to enable the PBGC to determine that the distress criteria set forth in amended section 4041(c)(2)(B) have been met. SEPPAA requires that the contributing sponsor and each substantial member of its controlled group satisfy at least one of the three distress criteria. The accompanying notice contains a description of the three distress tests, a definition of "substantial member" of a controlled group, and a statement of the information that must be submitted in order to establish satisfaction of the criteria. In addition to this information, the plan administrator will have to supplement the Form 5310 originally filed by adding to the participant data schedules called for in item 24 a column showing the monthly guaranteed benefits of each participant. This will enable the PBGC to determine whether the plan is sufficient for benefit commitments, guaranteed benefits or neither.

There is one more requirement for plans electing distress terminations. If the plan administrator has not already done so, the administrator must, by the date on which the notice of election is filed with the PBGC (or by the proposed termination date, if later), limit all benefit payments to benefits to which assets are allocated pursuant to ERISA section 4044.

What happens after the plan administrator chooses a termination option and submits the required information depends in large part on the type of termination elected and on whether the plan administrator had already commenced the final distribution of plan assets. Since in the great majority of cases the distribution will not have been started, the discussion that follows applies to those cases; procedures when the final distribution had already begun will be discussed thereafter.

#### Standard Termination

When a plan administrator elects to terminate in a standard termination and the PBGC had not issued the plan a notice of sufficiency prior to April 7, 1986, the PBGC must determine, based on the plan administrator's and enrolled

actuary's certifications, whether the plan will be able to pay all benefit commitments. If that determination is affirmative, the PBGC will so notify the plan administrator and advise the administrator that for the standard termination to occur, plan assets must be distributed in full satisfaction of all benefit commitments within 90 days after the date of the PBGC's notice. Within 30 days after the distribution, the plan administrator must submit to the PBGC the post-distribution certification required under Part 2617 of the PBGC's regulations.

After receipt of the notice from the PBGC and prior to making the distribution, the plan administrator should assure himself or herself that the plan is still sufficient for all benefit commitments. If it is not, the plan administrator may not make the final distribution and must notify the PBGC immediately of this subsequent insufficiency. (A termination distribution from a plan that cannot pay all benefit commitments is a violation of Title IV of ERISA.) When this occurs or when for any other reason the plan administrator fails to make the complete distribution within the 90-day period, the plan may not terminate. (The only exception to this would be the very unusual case where the plan administrator could demonstrate that the statutory distress criteria are satisfied, thus permitting the conversion to a distress termination.) When a standard termination is thus prohibited, the plan is an ongoing plan and is treated for all purposes as if a notice of intent to terminate was never filed.

For plans with respect to which the PBGC had issued a sufficiency notice before April 7, 1986, the rules are very similar. Since the PBGC already made a sufficiency determination (albeit with respect to guaranteed benefits), it will not make another one. Instead, in order for the standard termination to be effective, the plan administrator must simply distribute plan assets in satisfaction of all benefit commitments within 90 days after the date of enactment, i.e., by July 7, 1986. Within 30 days after the distribution, the plan administrator must file the post-distribution certification. If the plan is unable to satisfy all benefit commitments (or for any other reason fails to comply with this requirement), then the rules and procedures described in the preceding paragraph shall apply.

Plan administrators electing a standard termination where no notice of sufficiency has previously been issued, must be aware of one more rule. If the plan termination will result in a



distribution to the contributing sponsor, pursuant to ERISA section 4044(d), of \$1,000,000 or more, the PBGC's issuance of the notice authorizing distribution may be deferred for a minimum of 90 days. The rules and procedures for such cases are discussed in detail in the accompanying notice.

#### Distress Termination

Upon receipt of an election of distress termination and accompanying information, the PBGC will determine whether the distress tests are satisfied. If the PBGC determines that the distress criteria are met, it will so notify the plan administrator. Thereafter, the termination will proceed in the manner described in the accompanying notice, and all of the rules set forth therein, including the rules dealing with employer liability, shall apply.

If the PBGC's determination is negative, it will so notify the plan administrator. In that event, any benefits in excess of benefits to which assets were allocated that were not paid since the filing of the notice of election with the PBGC shall be immediately due and payable with interest. In addition, the plan administrator is required to notify the PBGC, within 14 days after the date of PBGC's notice, whether the administrator wishes to proceed with a standard termination or to withdraw the notice of intent to terminate. Failure to so notify the PBGC will be deemed to constitute a withdrawal of the notice of intent to terminate. When the notice is withdrawn, the plan is an ongoing plan and is treated for all purposes as if the notice of intent to terminate had never been filed. If the plan administrator elects to pursue a standard termination, the rules and procedures set forth in the preceding section of this bulletin shall apply, except that the plan administrator's and enrolled actuary's certifications shall be submitted to the PBGC within 21 days after the notice of election of a standard termination.

#### Special Rules for Plans that Began Final Distribution Before April 7, 1986

As discussed earlier in this notice, the plan administrator does not have an absolute right to withdraw the notice of intent to terminate if the administrator had already commenced (or completed) the final distribution of assets prior to enactment of SEPPAA. The statutory transition rule specifically provides that the notice may be withdrawn only if, within 90 days after the date of enactment, the plan administrator is able to restore the plan, i.e., return the plan to essentially its pre-termination condition. In other words, the plan administrator must be able to recover

asset distributions that were made because of and in connection with the plan termination. This includes the recovery of amounts paid to an insurer to purchase irrevocable commitments for participants. If the plan administrator wishes to restore the plan, he or she must do so before notifying the PBGC that the administrator elects to withdraw the notice of intent to terminate. In addition, the election notice to the PBGC must include a statement by the plan administrator describing the actions undertaken that effected the restoration of the plan.

Absent plan restoration, the termination must proceed as a standard or distress termination. In the more typical case, a standard termination, the contributing sponsor may have to provide additional funds to enable the plan to pay all benefit commitments. As discussed in the preceding section, this plan distribution must be completed by July 7, 1986, 90 days after enactment.

The PBGC notes that plan administrators desiring to pursue plan restoration must keep in mind this statutory deadline for completing the final distribution of plan assets in plans that are not restored. The plan administrator needs to attempt the restoration early enough in the 90-day period, that if it cannot be achieved, the distribution can be completed within that period.

If terminating in a standard termination will necessitate the contributing sponsor's providing additional funds to make the plan sufficient for benefit commitments and the contributing sponsor is financially unable to do so within the 90-day period, the sponsor may request the PBGC to extend the period to not later than April 7, 1987. Such a request must be submitted before the end of the 90-day period for distribution and must contain information demonstrating the sponsor's current inability to provide the additional required funding and that the contributing sponsor would likely be able to provide the required amounts by the end of the extended period. The PBGC will grant the extension only if it finds that these two conditions exist. When the PBGC grants an extension of time to make the plan sufficient for benefit commitments, it will normally require the plan administrator to collect and distribute the additional amounts paid to the plan. The PBGC may, however, whenever it deems it appropriate, establish a section 4049 trust and appoint a section 4049 trustee to perform these functions (even though the amounts to be paid by the contributing sponsor are not liabilities

arising under amended section 4062 of ERISA). (See the accompanying notice for a fuller discussion of the section 4049 trust and trustee.)

#### Conclusion

The PBGC recognizes that the enactment of SEPPAA will create a great deal of uncertainty for plan administrators that filed notices of intent to terminate on or after January 1, 1986 and before April 7, 1986, and the PBGC hopes that this notice together with the other notice issued today will alleviate much of this uncertainty. In addition, the PBGC will be sending letters and copies of these notices to each of these plan administrators. Finally, the PBGC has assigned specially trained staff to answer questions dealing with SEPPAA. Members of the public may reach these individuals between 8:30 a.m. and 5:00 p.m. every weekday at (202) 956-5000 or (202) 956-5059 for TTY and TTD.

#### Information Collection

The collection of information described in this notice has been approved by the Office of Management and Budget under control number 1212-0036.

Issued in Washington, D.C., this 8th day of April 1986.

Royal S. Dellinger,

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 86-8186 Filed 4-9-86; 8:45 am]

BILLING CODE 7708-01-M

#### 29 CFR Parts 2616, 2617 and 2623

#### Single-Employer Plan Termination Under the Single-Employer Pension Plan Amendments Act of 1986

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interim procedures.

**SUMMARY:** This notice summarizes the requirements of the Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") relating to terminations of single-employer plans and provides guidance to plan administrators on terminating plans prior to the PBGC's amending the relevant regulations. SEPPAA changes many of the rules and procedures for terminating plans and applies to all single-employer plans for which a notice of intent to terminate was filed with the PBGC on or after January 1, 1986. The effect of this notice is to advise plan administrators of the new statutory requirements for plan terminations, including the new



procedures and information requirements.

**EFFECTIVE DATE:** April 7, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Pension Benefit Guaranty Corporation, Coverage and Inquiries Branch, IOD, Code 25410, 202 K Street NW., Washington, DC 20006; or call 202-956-5000 or 202-956-5059 for TTY and TDD (these are not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The Single-Employer Pension Plan Amendments Act of 1986 ("SEPPAA") became law on April 7, 1986. SEPPAA amends many of the provisions of the Employee Retirement Income Security Act ("ERISA") relating to terminations of single-employer pension plans. SEPPAA applies to all terminations with respect to which a notice of intent to terminate was filed on or after January 1, 1986.

In light of SEPPAA, the Pension Benefit Guaranty Corporation ("the PBGC") will be revising its regulations and accompanying forms governing single-employer plan terminations. Pending these revisions, however, the PBGC is publishing this notice to provide guidance to plan administrators in terminating a single-employer plan under the new law. (Section 11019(c) of SEPPAA authorizes the PBGC to prescribe temporary procedures to implement the Act during the 180-day period after enactment). This notice summarizes the statutory requirements of SEPPAA relating to terminations of single-employer plans by plan administrators and describes in detail the specific steps that must be taken to terminate a plan on or after April 7, 1986. (Included are specific modifications that must be made with respect to Forms 5310, 444 and 445.) (The PBGC is issuing another notice today that describes modifications to the termination procedures set forth below that are to be followed by plan administrators of plans with respect to which a notice of intent to terminate was filed on or after January 1, 1986 and before April 7, 1986.)

**SEPPAA Provisions on Plan Termination**

SEPPAA creates two types of voluntary termination for single-employer plans. The first, a standard termination (covered by amended section 4041(b) of ERISA), is very similar to a termination of a sufficient plan under prior law. However, a plan may terminate in a standard termination only if it has sufficient assets to pay all benefit commitments under the plan. "Benefit commitments" is a new term

under Title IV and means, generally, all nonforfeitable benefits under the plan, including early retirement supplements or subsidies and plant closing benefits. (Failure to submit a formal application to retire, to complete a required waiting period, or to designate a beneficiary does not make a benefit forfeitable.) (The plan sponsor of a plan that cannot satisfy all benefit commitments may, after notice to plan participants, beneficiaries and any union that represents participants, "freeze" the plan by plan amendment ceasing the crediting of future service for benefit accruals, with vesting and funding of the plan continuing.)

In order to terminate in a standard termination, the plan administrator must comply with SEPPAA's several notice requirements, including one requiring the submission to the PBGC of an enrolled actuary's certification of sufficiency for all benefit commitments. After filing the requisite information with the PBGC, the plan administrator may not implement the termination for, generally, 60 days. If, within that period, the PBGC determines that the termination does not comply with the statutory requirements, it will issue a "notice of noncompliance" and the plan may not terminate. If the PBGC does not issue a notice of noncompliance within the 60-day period (or such extended period as the PBGC and plan administrator may agree to), the plan administrator must make a final distribution of plan assets and submit a certification of the distribution to the PBGC.

The second type of voluntary single-employer plan termination is a distress termination (covered under amended section 4041(c)). To terminate in this way, the plan administrator must comply with the statutory notice requirements, and the PBGC must find that the contributing sponsor and each substantial member of the contributing sponsor's controlled group<sup>1</sup> meet one of the statutory distress criteria. If these conditions are not satisfied, the plan may not terminate in a distress termination.

When the PBGC determines that the distress criteria have been met, it will then determine whether the plan is

sufficient for guaranteed benefits and for benefit commitments as of the proposed date of termination and notify the plan administrator of its findings. The termination procedure to be followed depends on the level of sufficiency of the plan. If a plan is sufficient for all benefit commitments, the plan administrator must close out the plan under the standard termination procedures. If the plan is not sufficient for all benefit commitments, but is sufficient for guaranteed benefits, the plan administrator must distribute plan assets according to those same procedures. In addition, a trustee will be appointed (pursuant to section 4049) to collect certain liability payments from the contributing sponsor and members of its controlled group and make payments to participants and beneficiaries up to the full amounts of their outstanding benefit commitments. If a plan is not sufficient for guaranteed benefits, generally the same procedures as under prior law apply: the plan administrator may make no distributions implementing the plan's termination, and the PBGC will trustee the plan under section 4042 and become responsible for the payment of guaranteed benefits. The section 4049 trustee referred to above will also be appointed to pay amounts to participants and beneficiaries in excess of guaranteed benefits up to full benefit commitments.

In distress terminations, the rules under prior law relating to the payment of benefits after the proposed termination date and before authorization to make the final distribution of plan assets continue to apply, although most of those rules come into effect earlier under SEPPAA. Thus, the prohibitions against termination distributions, the payment of benefits in other than annuity form and the purchase of irrevocable commitments, all apply as of the date of filing the notice of intent to terminate. The requirement to reduce benefit payments is effective as of the proposed termination date. For both standard and distress terminations, the rules governing the final distribution of assets continue to apply. (See the PBGC's regulations on termination of sufficient plans and benefit reductions in terminated plans, 29 CFR Parts 2617 and 2623.)

Under SEPPAA, as under prior law, termination proceedings may also be initiated by the PBGC under section 4042 of the Act.

<sup>1</sup> SEPPAA has eliminated the sometimes confusing term "employer" from the Title IV single-employer plan provisions. Instead, the statute now refers to a "contributing sponsor", the person responsible for meeting the funding requirements with respect to a single-employer plan, and "members of the contributing sponsor's controlled group". The contributing sponsor together with the members of its controlled group is the same as an "employer".



## Specific Requirements

### Notice of Intent to Terminate

In either a standard of distress termination, the plan administrator must give written personal notice of the proposed termination to affected parties at least 60 days before the proposed termination date (amended section 4041(a)(2)). Affected parties include the plan participants, beneficiaries and alternative payees, any employee organization representing participants, and, for distress terminations only, the PBGC; the PBGC no longer receives the notice of intent to terminate if the plan is terminating in a standard termination. This notice must state that a termination is intended and give the proposed termination date. Failure to provide this notice will nullify the proposed termination.

### Standard Termination

As soon as possible after issuance of the notice of intent to terminate, the plan administrator must submit a notice to the PBGC containing the following:

1. A certification by an enrolled actuary stating (a) the projected amount of plan assets and (b) the actuarial present value of benefit commitments (determined as of the proposed termination date), both valued as of the proposed date of final distribution of plan assets, and (c) that the plan is projected to be sufficient for all benefit commitments as of that date.

2. A certification by the plan administrator that the information on which the enrolled actuary based the certification is accurate and complete.

These certifications are similar to those required under the PBGC's Enrolled Actuary and Plan Administrator Certification Program. Therefore, plan administrators filing for standard terminations shall file under that program. This means that the plan administrator must submit Form 5310, completing only Part I and Part III, items 9, 10 (a) and (b), 11(a) and 12, and PBGC Forms 444 ("Enrolled Actuary Certification") and 445 ("Plan Administrator Certification"). In completing these forms, the following modifications and special rules apply:

1. Form 5310: Under Part I, the only "reason for filing" is box E,<sup>2</sup> the notice

referred to in item 3 is deemed to be the notice of intent to terminate that must be issued to affected parties as discussed above, and the plan administrator shall write in the space next to item 3 the date on which the notice was issued; under part III, in item 12, box (f) must be checked (in addition to any other applicable box) and the words "standard termination" inserted in the space indicated.

2. Form 444: On the first page, in the Enrolled Actuary's certified statement, the Enrolled Actuary shall delete "benefits in Priority Categories 1 through 4" and insert in lieu thereof "benefit commitments"; item 1A on page two is deemed to refer to benefit commitments; item 2C is deemed to read "(a) qualifying bid was or will be obtained . . ."; and item 7B shall be omitted.

3. Form 445: Disregard the paragraph immediately preceding item 2 and omit item 3.

Concurrently with the filing of the notice with the PBGC, the plan administrator must also send a notice to each plan participant or beneficiary. The notice must be written in language that can be understood by the recipient and must include the amount and benefit form of the person's benefit commitments (if any) as of the proposed termination date, and the information used to determine the person's benefit commitments, i.e., length of service, age, wages and assumptions including the interest rate.

As mentioned above, if the PBGC does not issue the plan a notice of noncompliance, generally within 60 days after receipt of the notice from the plan administrator, the plan administrator shall distribute all plan assets. (During the first 180 days after enactment of SEPPAA, the PBGC may unilaterally extend the 60-day period for an additional 60 days.) The distribution must be done in accordance with Part 2617 of the PBGC's regulations (the regulation on termination of sufficient plans). Within 30 days after the distribution is completed, the plan administrator shall file with the PBGC the post-distribution certification required under Part 2617.

### Special Rules for Certain Plans With Reversions of Assets

For plans terminating in a standard termination with respect to which the notice of intent to terminate was filed (or is issued) on or after January 1, 1986 and before June 6, 1986 (i.e., 60 days after enactment of SEPPAA),<sup>3</sup> and with

respect to which the PBGC did not issue a notice of sufficiency prior to April 7, 1986, if the termination will result, pursuant to section 4044(d), in the reversion to the contributing sponsor of at least \$1,000,000, SEPPAA requires slightly different termination procedures.<sup>4</sup> These procedures apply only if the lesser of 200 plan participants or 10 percent of the plan participants file complaints regarding the termination with the PBGC before April 22, 1986 or 45 days after the filing or issuance of the notice of intent to terminate, whichever is later. When this happens, the PBGC will notify the plan administrator and advise him or her that the final distribution of plan assets may not be made until receipt of a notice from the PBGC that it has determined that the plan is sufficient for all benefit commitments. The PBGC may not issue this notice for at least 90 days (except as noted below) after it makes this determination. During this 90-day period, the PBGC will review and respond to the participant complaints. The PBGC may shorten the 90-day period (except in cases involving an acquisition, takeover or leveraged buyout), but only if the contributing sponsor demonstrates to the PBGC's satisfaction that the contributing sponsor is experiencing substantial business hardship (i.e., the contributing sponsor has been and will continue to operate at a loss).

### Distress Termination

As under a standard termination, in a distress termination there is a second notice requirement after the notice of intent to terminate. This notice, to be filed with the PBGC as soon as possible after the notice of intent to terminate, must contain information sufficient to enable the PBGC to determine that the criteria for a distress termination are met and the degree to which the plan is funded.

Under amended section 4041(c)(2)(B), there are three distress criteria. In order

standard termination; it is issued only to the other affected parties. Accordingly, this special rule deals both with notices filed with the PBGC (before SEPPAA) and notices issued to affected parties other than the PBGC.

<sup>4</sup> These special procedures also apply to plans for which the notice of intent to terminate was filed before January 1, 1986 and to which the PBGC did not issue a notice of sufficiency before April 7, 1986, if the PBGC receives the requisite number of complaints before April 22, 1986. Since these plans are terminating under prior law, they may not in any case distribute assets until they receive a notice of sufficiency. The effect of these special procedures, however, is to prohibit the PBGC's issuance of a notice of sufficiency for an additional 90 days after April 22, 1986. Thus, the 90-day period referred to in former section 4041 is automatically extended.

<sup>2</sup> Under the revised filing requirements necessitated by SEPPAA, plan administrators will no longer be able to use Form 5310 for "one stop" filing, unless the plan is terminating in a distress termination and is not sufficient for guaranteed benefits. See the section on "Information on Plan Asset Sufficiency/Insufficiency" below.

<sup>3</sup> As noted above, the SEPPAA a notice of intent to terminate is no longer filed with the PBGC for a



to qualify for a distress termination, the contributing sponsor and each substantial member of its controlled group must satisfy one of the criteria. (A "substantial member" of a controlled group is a person whose assets comprise at least 5 percent of the total assets of the entire controlled group.)

**Criterion 1. Liquidation in bankruptcy or insolvency proceedings:** The person has filed or had filed against it, as of the proposed termination date, a petition seeking liquidation under title 11 of the United States Code or under any similar state law, and the case has not been dismissed as of the proposed termination date.

**Criterion 2. Reorganization in bankruptcy or insolvency proceedings:** The person has filed or had filed against it, as of the proposed termination date, a petition seeking reorganization under title 11 or under any similar state law (or a proceeding described in 1. above has been converted to a reorganization proceeding as of the proposed termination date), the proceeding has not been dismissed as of that date, and the bankruptcy court or the appropriate state court approves the termination.

**Criterion 3. Inability to pay debts and continue in business or unreasonably burdensome pension costs:** Unless a distress termination occurs, the person will be unable to pay its debts when due and will be unable to continue in business; or the costs of providing pensions have become unreasonably burdensome because of a decline in the person's workforce of employees covered as participants under all of the single-employer plans for which the person is a contributing sponsor.

#### *Information Required to Establish Satisfaction of Distress Criteria*

In order to establish satisfaction of the distress criteria, the notice to the PBGC must include the information specified in items 1 and 2 or 3 or 4 below:

1. Identification of all controlled group members and of each substantial member.

(a) The name and employer identification number ("EIN") of each controlled group member; if no EIN has been assigned, the notice should so state.

(b) The name of each substantial member of the controlled group.

(c) The basis for the determination that a member is a substantial member, e.g., stock ownership, partnership interest, etc., and the percentage of the controlled group's total assets owned by each substantial member.

(d) Identification of the distress test satisfied by each substantial member.

2. Satisfaction of liquidation or reorganization criterion.

(a) A copy of the filed petition under title 11 of the United States Code or similar state law, showing the court docket number.

(b) For a reorganization case (criterion 2), a copy of the order of the bankruptcy court or the appropriate state court approving the termination.

3. Proof of inability to stay in business without a distress termination.

(a) Audited (or if unavailable, unaudited) financial statements for the three most recent fiscal years ending prior to the proposed termination date.

(b) Projections of future revenues and expenses assuming both the continuation and the termination of the pension plan for which a distress termination is sought, for the next three fiscal years beginning with the year in which the plan would terminate; the projections that assume plan termination must include the projected termination liabilities to the PBGC, the section 4042 trustee and the section 4049 trustee (amended section 4062 defines these liabilities).

(c) Certification by the person's chief financial officer or chief executive officer that all the information submitted is accurate and complete to the best of his or her knowledge, and that the person will not be able to continue in business without the plan termination.

(d) All recent (within the prior three years) financial analyses (if any) done of the person by an outside party, and including a certification by the person's chief financial officer that the information on which the analysis was based was accurate and complete.

(e) Any other information that the person believes is relevant.

4. Proof of unreasonably burdensome pension costs caused by declining covered employment.

(a) The name and plan identification number ("PIN") of each single-employer defined benefit plan for which the person is a contributing sponsor.

(b) For each plan named in item a, the plan census showing total, active and retired participants for the most recent five plan years ending prior to the proposed termination date; this data may be provided by submitting the relevant Forms 5500 with schedule B or Form 5310, items 15(d) and 16(a) and (d)-(f) (done for each of the five plan years).

(c) Audited (or if unavailable, unaudited) financial statements of the person for the most recent five fiscal years ending prior to the proposed termination date, and including a break-out of the person's total pension costs (including any defined contribution

plans) as a percentage of the person's total wage costs and a statement of the total costs per plan.

(d) Dates and amounts of any funding waivers or extensions of the amortization period granted within the most recent five plan years ending prior to the proposed termination date.

(e) Any other information that the person believes is relevant.

#### *Information on Plan Asset Sufficiency/Insufficiency*

The information that must be submitted showing the level of the plan's funding is similar to the information submitted for a standard termination. Specifically, the plan administrator is required to submit the following:

1. A certification by an enrolled actuary stating (a) the amount of plan assets, (b) the actuarial present value of benefit commitments (determined as of the proposed termination date), and (c) the actuarial present value of benefits guaranteed by the PBGC (also determined as of the proposed termination date), all valued as of the proposed termination date, and (d) whether, as of that date, the plan is sufficient for benefit commitments, guaranteed benefits or neither.

2. A certification by the plan administrator that the information on which the enrolled actuary based the certification, the information submitted to demonstrate satisfaction of the distress criteria, and information submitted to the PBGC under item 3. below (if any) are all accurate and complete.

3. If the plan is not sufficient for benefit commitments as of the proposed termination date, the plan administrator must provide the PBGC with participant data necessary to enable the section 4049 trustee to make benefit payments; this includes the name and address of each participant and beneficiary as of the proposed termination date, the amount of the benefit commitments of each, and the data used to determine the benefit commitments of each. (This is the same data that the plan administrator must provide to participants and beneficiaries in a standard termination, discussed under the heading "Standard Terminations" above.)

Because the enrolled actuary certification for distress terminations is similar to that for standard terminations, the PBGC suggests that actuaries use PBGC Form 444, modifying it to fit the facts of the particular plan, whenever the value of the plan's assets equals or exceeds the value of guaranteed



benefits. Modifications that would have to be made include amending the first paragraph of the certification to state specifically the extent to which plan assets can satisfy plan benefits and making all statements as of the proposed plan termination date, rather than the date of distribution. (The PBGC points out that in these cases where plan assets equal or exceed guaranteed benefits, the plan administrator will be making a final distribution of assets after receiving the PBGC's approval to do so. This is discussed in greater detail below.) In addition to the Form 444, Form 5310 should also be submitted, filled out in the same manner as required under a standard termination (discussed above) (except that in item 12 the words "distress termination" should be inserted in the space provided) and also including the participant data schedules required by item 24 and set forth in the instructions to the form. In those schedules, a column should be added showing the monthly guaranteed benefit of each participant. Submission of these schedules satisfies the requirement in item 3, above relating to data on each participant's benefit commitments. The participant data schedules need not be submitted if the enrolled actuary is certifying that the plan is sufficient for all benefit commitments.

If the plan is not sufficient for guaranteed benefits, the enrolled actuary need not prepare Form 444. Rather, he or she should prepare a certification covering the valuations described above and stating that the section 4044 allocation rules were followed. In this case, a Form 5310 with all of Parts I, III and IV completed must be submitted. Again, the participant data schedule must include a column for guaranteed benefits.

Finally, the plan administrator needs to make the certification described in item 2, above. PBGC Form 445 need not be used for this purpose, unless the plan is sufficient for all benefit commitments.

#### *Processing of Proposed Distress Termination*

Upon receipt of all this information, the PBGC will determine first whether the plan qualifies for a distress termination and will notify the plan administrator of that determination. When the PBGC determines that the plan does not qualify, the notice to the plan administrator will advise him or her that the termination may be converted to a standard termination if the plan is sufficient for all benefit commitments or the contributing sponsor is willing to make it so, upon written notice to the PBGC within 14

days after the date of the notice from the PBGC. If the termination is thus converted to a standard termination, the original proposed termination date will remain in effect and the termination will be processed under the standard termination procedures. In that event, the plan administrator will be required to submit valuations updated to the proposed distribution date and certified by an enrolled actuary. If the PBGC does not receive a notice of conversion within the 14-day period, the notice of intent to terminate shall be null and void and the plan an ongoing plan. (In either event, any amount of benefits not paid after the termination date because of the limitation on such payments in § 2623.5 of the PBHC's regulation on benefit reductions in terminated single-employer plans shall be immediately due and payable with interest, and the limitation shall cease to apply.)

When the PBGC finds that the distress criteria are satisfied, it will then determine the level of the plan's funding and notify the plan administrator of that determination. Upon receipt of the PBGC's determination that the plan is sufficient for all benefit commitments, the plan administrator shall distribute all plan assets and wind up the affairs of the plan in the same manner as under a standard termination. (See the rules discussed under "Standard Terminations".)

If the PBGC determines that the plan is sufficient for guaranteed benefits but not for benefit commitments, the plan administrator shall distribute all available assets and otherwise follow the termination procedures applicable under a standard termination. In addition, however, the PBGC will appoint a trustee under section 4049 of ERISA. This trustee collects employer liability payments and makes annual benefit payments to plan participants and beneficiaries, not to exceed the amount of each's outstanding benefit commitments. The amount of this liability is determined under amended section 4062(c) and is the lesser of 75 percent of the plan's total unfunded benefit commitments of 15 percent of the present value of total benefit commitments under the plan. The liability is payable annually in accordance with section 4062(c).

When the PBGC determines that a plan is not sufficient for guaranteed benefits, the termination then proceeds as under prior law: the plan administrator may not distribute any assets pursuant to the plan's termination, the PBGC will have a trustee appointed under ERISA section 4042, and the PBGC will become

responsible for the payment of guaranteed benefits under the plan. In addition, the PBGC will appoint a section 4049 trustee for the purposes discussed above. Plan sponsors should be aware that the liability to the PBGC in these cases has also been changed by SEPPAA. Amended section 4062(b) provides that when 75% of the amount of unfunded guaranteed benefits exceeds 30 percent of the contributing sponsor's controlled group net worth, the contributing sponsor (and the members of its controlled group) are also liable for that excess. Unlike the 30 percent of net worth portion of the liability, which is due and payable as of the termination date, this additional portion is payable to the PBGC over a period of years in accordance with terms established pursuant to section 4062(b).

As discussed above, in a distress termination the determinations with respect to a plan's sufficiency are made as of the termination date, but the plan administrator will be distributing the plan's assets (in cases other than when the plan is not sufficient for guaranteed benefits) at a later date. It is, therefore, possible that as of the distribution date the plan may no longer be sufficient for all benefit commitments or all guaranteed benefits, as the case may be. As soon as the plan administrator becomes aware of that fact, he or she must so notify the PBGC. At that point, the termination becomes subject to all the rules and procedures that would have applied had the plan been insufficient for benefit commitments or guaranteed benefits (whichever is applicable) as of the termination date. Thus, a section 4049 trustee and, if applicable, a section 4042 trustee, will be appointed, and liability to the section 4049 trustee and, if applicable, to the PBGC and to the section 4042 trustee, will accrue.

#### *Conclusion*

The PBGC recognizes that there will be a great deal of confusion concerning the new plan termination rules during this period right after the enactment of SEPPAA. The PBGC is committed to providing plan administrators, contributing sponsors and plan participants and beneficiaries as much guidance as possible, as expeditiously as possible. To this end, the PBGC will be sending letters and copies of this notice to each plan administrator filing a notice of intent to terminate on or after April 7, 1986 and to any other person so requesting. In addition, the PBGC has assigned specially trained staff to answer questions dealing with SEPPAA. Members of the public may reach these



individuals between 8:30 a.m. and 5:00 p.m. every weekday at (202) 956-5000 or (202) 956-5059 for TTY and TTD.

#### *Information Collection*

The collection of information described in this notice has been approved by the Office of Management and Budget under control number 1212-0036.

Issued in Washington, D.C., this 8th day of April, 1986.

**Royal S. Dellinger,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 86-8185 Filed 4-9-86; 8:45 am]

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Thursday, April 10, 1986

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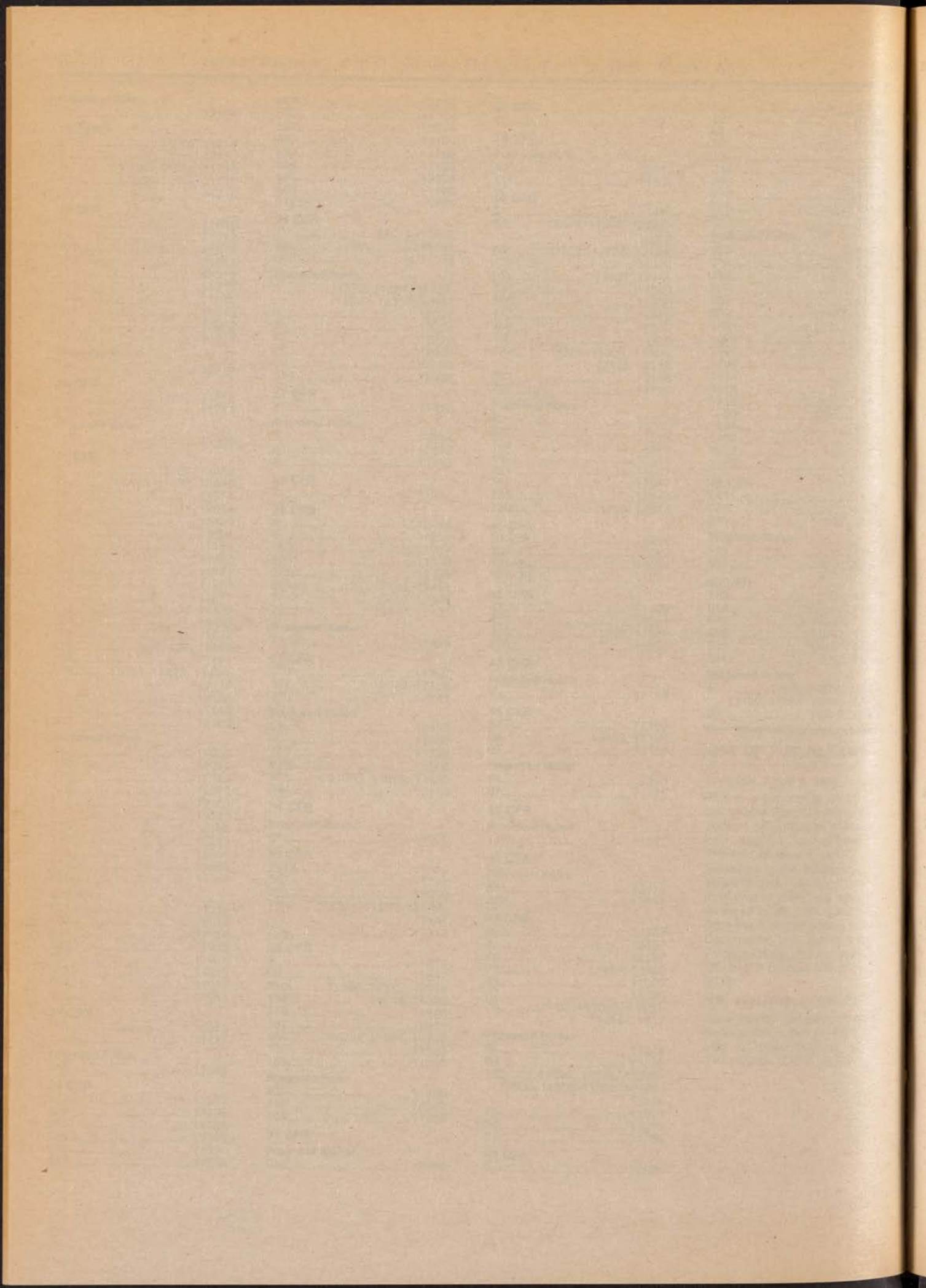
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